

1 SUPERIOR COURT OF THE STATE OF CALIFORNIA  
2 FOR THE COUNTY OF LOS ANGELES  
3 Department 19 Hon. Warren L. Ettinger, Judge  
4

5 BETTY BULLOCK, )  
6 )  
7 Plaintiff, )  
8 )  
9 vs. ) NO. BC249171  
10 )  
11 PHILIP MORRIS, INCORPORATED, a )  
12 corporation; et al., )  
13 Defendants. )  
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18 REPORTER'S DAILY TRANSCRIPT OF PROCEEDINGS  
19 Los Angeles, California  
20 October 2, 2002  
21

22 APPEARANCES:

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35 Volume \_\_\_\_ of \_\_\_\_ Ruanne McArthur CRR, RPR, CM, CSR#2699  
36 Page 4072 through 4201 Official Reporter  
37 INDEX FOR OCTOBER 2, 2002

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1 Los Angeles, California October 2, 2002  
2 Case Number: BC249171  
3 Case Name: Bullock vs. Philip Morris  
4 Department 19 Hon. Warren L. Ettinger, Judge  
5 Reporter: Ruanne McArthur, CSR #2699  
6 Time: 9:00 a.m. Session  
7 Appearances: (As heretofore noted.)  
8 -oOo-

9 (The following proceedings were held  
10 in open court outside the presence  
11 of the jury:)

12  
13 THE COURT: I have given more thought to that,  
14 and let me tell you what I would like to do with it. I  
15 know they already have a copy of it; but nonetheless,  
16 here is what I think we should do. Get out the --

17 THE CLERK: Are we referring to the jury  
18 instructions?

19 THE COURT: Yes.

20 THE CLERK: They haven't been passed out.

21 THE COURT: I know they haven't, but it's in  
22 there; but we may want to modify it.

23 Here is what I would suggest we do,  
24 looking at the second sentence: "You may not impose  
25 punitive damages on plaintiff's claims on conduct  
26 between January 1, 1988 and December 31, 1997;" and just  
27 eliminate the words "of defective product, negligence,  
28 or fraud based on."

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1 In other words, we are saying to them you  
2 may not impose punitive damages on plaintiff's claims  
3 for conduct between January 1, 1988 and December 31,  
4 1997.

5 MR. PIUZE: That's agreeable with plaintiff.

6 MR. LEITER: That's fine, your Honor. I would  
7 leave "if based on," but --

8 THE COURT: And I think "based on" is fine.

9 MR. LEITER: Okay.

10 THE COURT: Yes, I think "based on" is fine.  
11 And it grammatically is better if we leave that in. I  
12 just don't want to throw in that "negligence" word  
13 because I know it's appropriate where you got it.

14 Now, the question is -- what I'd like you  
15 to be able to do is the following: On DD would you  
16 cross out the words -- don't do it until -- oh, you are  
17 doing it with a pencil. Good for you. I forgot about  
18 pencils -- the words "of defective product, negligence  
19 or fraud," just those words, and then we will read it as  
20 it is.

21 Now, if you can do that on all 12, that  
22 would be great, and then we will hand them out to them  
23 when they get here.

24 Now, I understood -- oh, there you are,  
25 Mr. Piuze -- that you have other issues that you wanted  
26 to deal with.

27 MR. PIUZE: Yes.

28 MR. LEITER: And we have, of course, the

1 documents that we talked about yesterday that need to be  
2 moved into evidence.

3 THE COURT: Right. Okay. So now let's go on  
4 the record.

5 THE REPORTER: We were on the record.

6 THE COURT: Oh, good. That's even better.

7 MR. PIUZE: So one of my issues concerns the  
8 document.

9 THE COURT: Okay. Let's hear it.

10 MR. PIUZE: I want the court to please take  
11 another look at this Master Settlement Agreement issue  
12 for two reasons. First of all, I proposed a stipulation  
13 along the lines that I thought the court suggested  
14 yesterday, and Mr. Leiter won't sign --

15 MR. LEITER: Not true, but we will get there.

16 MR. PIUZE: -- that underlines the entire  
17 problem with this Master Settlement Agreement. So I've  
18 got two subparts here. One is this: In the agreement  
19 itself, as we discussed yesterday, there is language  
20 that flat-out says that this agreement can't ever be  
21 used as evidence in any other trial.

22 Your Honor believed that this was and  
23 treated it as if it was a simple confidentiality  
24 agreement that could be waived by Philip Morris at its  
25 discretion, but that's absolutely not correct; and  
26 yesterday I was tired and maybe I didn't give the court  
27 enough guidance, but I thought it over overnight.

28 Your Honor was absolutely right when you

1 inquired and said, "Gee, is it available on the  
2 internet?"

3 "Yes, it's available."

4 "Well, it can't be very confidential  
5 then." That was part of the court's thinking. I agree.

6 The fact that it has always been on the  
7 internet, the fact that it is a public document  
8 involving public entities in all 50 states meant it was  
9 never going to be confidential.

10 In this state, as your Honor knows full  
11 well, there can be no confidential settlement agreements  
12 or other agreements between a public entity and other  
13 people. It's just against the law in the state;  
14 therefore, that could never have been the purpose of  
15 putting in that language. That language was not put in  
16 there for confidentiality purposes. It would have been  
17 illegal in the state and void.

18 That language was put in for a totally  
19 different reason; and the reason it was put in is so  
20 that in a case exactly like this, the defendants who  
21 paid the money would not be able to hoodwink the jury  
22 into thinking that the moneys paid to the State somehow  
23 absolved them, got them off the hook, diminished their  
24 responsibility, or should in any way be taken into  
25 account in any other case. That's why that language is  
26 in there.

27 THE COURT: Let's me interrupt just to ask a  
28 question.

1 Where is it that says that's why that  
2 language was in there?

3 MR. PIUZE: By inference, because it can't be  
4 there for confidentiality. It cannot be, your Honor.

5 THE COURT: I understand what you just said. I  
6 want to know what is the authority that you have for the  
7 statement that you just made where you said the reason  
8 the language is in there is because.

9 MR. PIUZE: Logic, logic and deduction. If it  
10 cannot be there for confidentiality -- and I think I had  
11 your Honor hooked on that one a second ago -- and it  
12 can't be in California. I don't know about the laws of  
13 the other 49 states, but in this state that is void and  
14 illegal.

15 THE COURT: Where was this document signed?

16 MR. PIUZE: 1990 --

17 THE COURT: Where?

18 MR. PIUZE: Where?

19 THE COURT: "Where".

20 MR. PIUZE: Well, if all of the 50 states had  
21 lawsuits, then the settlement agreement for California  
22 was signed here.

23 THE COURT: Did they?

24 MR. PIUZE: Did they what?

25 THE COURT: You say "if all of the 50 states."

26 MR. PIUZE: Yes. That's part of the recitals in  
27 there. All the 50 states had lawsuits.

28 THE COURT: And therefore, each one was signed

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1 in the particular state of the -- the particular  
2 plaintiff, State plaintiff. It wasn't signed in one  
3 location like Washington, D.C. or --

4 MR. PIUZE: I don't know that, and I don't know  
5 that it's my burden to show that.

6 THE COURT: I'm not suggesting it is. I just  
7 asked if you knew.

8 MR. PIUZE: But what I know is the State of  
9 California filed a lawsuit here in California and the  
10 tobacco industry settled with the State of California,  
11 amongst others, and in this state it is flat-out illegal  
12 to have a secret settlement involving a public entity.

13 THE COURT: You are preaching to the choir. I  
14 know that.

15 MR. PIUZE: I know you know that.

16 THE COURT: Okay. Aside from the fact that  
17 you -- there's several facts. One, you believe that  
18 because everybody signed it and it says it is not to be  
19 used in another trial, that that means that no one  
20 can -- is it your position that nobody can refer to any  
21 of the provisions within it?

22 MR. PIUZE: That would be my position, and I  
23 would further explain as follows: Having been down this  
24 route before in a case called Boeken last year,  
25 Mr. Leiter and Mr. Carlton chose to bring in Philip  
26 Morris executives and explain what Philip Morris had  
27 agreed to do; and Philip Morris executives came in  
28 here -- one of the nine of the governing chosen few came

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1 in here from New York City and said, "Here is what we  
2 have agreed to do. Here is what we have agreed  
3 corporately. Here is our new corporate logo, and we  
4 won't do this, won't do this, won't do this, won't do  
5 this."

6 They had that avenue available to them if  
7 they want to tell the jury --

8 THE COURT: And you found nothing objectionable  
9 about them doing that?

10 MR. PIUZE: I didn't object to it.  
11 THE COURT: Okay. And -- nice sidestep, but  
12 that's okay.  
13 MR. PIUZE: Well, it's a fair answer.  
14 THE COURT: It is a fair answer. It is a  
15 perfectly fair answer; but they came in and said, if I  
16 understand you correctly, "This is what we were mandated  
17 to do"?  
18 MR. PIUZE: No.  
19 THE COURT: No? They said, "This is what we are  
20 doing"?  
21 MR. PIUZE: "This is what we've done."  
22 THE COURT: "We've done." Without reference to  
23 any documents?  
24 MR. PIUZE: I believe that's correct. "We are  
25 good guys. We have changed the way we work. We do this  
26 now and this and this and this and this."  
27 THE COURT: Okay. Let's just stop with that  
28 part of it, because there are two parts. One is the

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1 dollar figure and then the agreement to abide by the  
2 standards.  
3 MR. PIUZE: Yes.  
4 THE COURT: Okay. And what was the stipulation  
5 that you proffered to the defendants on that issue?  
6 MR. PIUZE: On the -- the stipulation I  
7 proffered this morning says as follows.  
8 What is the exhibit number?  
9 MR. BLEAKLEY: 12391.  
10 MR. PIUZE: The stipulation I proffered is as  
11 follows:  
12 "It has been stipulated that  
13 the Master Settlement Agreement,  
14 which is Exhibit 12391, does not  
15 provide any payments for personal  
16 injuries and does not provide any  
17 payments for punitive damages.  
18 It has been stipulated that the  
19 Master Settlement Agreement  
20 provides payments to the states  
21 for reimbursements of funds spent  
22 on health-care costs."  
23 THE COURT: And that's as far as it went?  
24 MR. PIUZE: That's as far as it went.  
25 THE COURT: And so we have nothing in the  
26 stipulation as to what prohibitions there are as to the  
27 cigarette companies based upon the language of the  
28 agreement?

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1 MR. PIUZE: That's correct. And the reason for  
2 that is the stipulation is in addition to the settlement  
3 agreement going into evidence.  
4 THE COURT: I understand that.  
5 MR. PIUZE: So they -- sure they --  
6 THE COURT: But if it doesn't go into evidence,  
7 then what?  
8 MR. PIUZE: If it doesn't go into evidence, that  
9 has been a trial -- that if there's a downside perceived  
10 by Philip Morris, they can chalk it up to their trial  
11 tactics of not calling any witnesses in this case.  
12 THE COURT: Well, they can and they can't. They  
13 can also chalk it up to the judge who, when asked the  
14 question, if we are going to be able to put in these

15 prohibitions that were in the document by introducing  
16 the document, and the judge said "yes," then we don't  
17 have to call those people in rebuttal on punitive  
18 damages.

19 MR. PIUZE: Not exactly. There wasn't a "those  
20 people." The only person sitting out in the corridor  
21 was someone with no personal knowledge of any of this, a  
22 hired economist who could have added nothing. That's a  
23 far cry from bringing in one of their ruling people from  
24 New York City to come out here and explain the company's  
25 position.

26 THE COURT: Anything else that you want to add?

27 MR. PIUZE: Yes. To me, just in case I haven't  
28 made this clear, the part about this evidence that

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1 bothers me is not the prohibitions, it's the money; and  
2 it bothers me a lot because I know how it's going to be  
3 argued and it's a miss --

4 THE COURT: Let me not focus on the money right  
5 now. I will get to the money, I promise you.

6 MR. PIUZE: All right.

7 THE COURT: Let me just focus on the  
8 prohibition, because that's really what we talked about  
9 yesterday when we talked about this document.

10 I take it that, Mr. Leiter, in going back  
11 and reviewing the settlement agreements, you were able  
12 to find page and line of the prohibition?

13 MR. LEITER: Yes, your Honor.

14 THE COURT: Would you recite what it says and  
15 what the pages are for your record.

16 MR. LEITER: Yes, your Honor. As your Honor had  
17 requested, we prepared an exhibit, which is  
18 Exhibit 12418, which lists the provisions and their page  
19 numbers and I will read them. There are 22.

20 THE COURT: Please.

21  
22 \* (Marked for identification Joint  
23 Exhibit 12418, document.)  
24

25 MR. LEITER: Prohibition on youth targeting, and  
26 each one has a corresponding page number in the exhibit;  
27 and these, by the way, are headings from the agreement  
28 itself.

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1 Prohibition on youth targeting.  
2 Prohibition on sponsoring teams and leagues.  
3 Elimination of outdoor advertising and transit  
4 advertisements. Prohibition on payments related to  
5 tobacco products and media product placements. Ban on  
6 tobacco brand name merchandise. Limitation on third  
7 party use of brand names. Limitations on lobbying.  
8 Restriction on advocacy concerning settlement periods.  
9 Dissolution of The Tobacco Institute, Inc., The Council  
10 for Tobacco Research USA, Inc., and The Center for  
11 Indoor Air Research, Inc. Regulation and oversight of  
12 new tobacco related trade associations. Prohibition on  
13 agreements to suppress research. Prohibition on  
14 material misrepresentations. Public access to  
15 documents. Establishment of a national foundation.  
16 Enforcement of consent decree. Enforcement of  
17 agreement. Coordination of enforcement. Inspection and  
18 discovery rights. Certain ongoing responsibilities of  
19 the settling states. Initial payments, annual payments,

20 and strategic contribution payments, and settling  
21 states' release discharge and covenant.  
22 THE COURT: Okay. The court will rule -- don't  
23 put that away because you are going to need to look at  
24 it -- that up to that level where they start talking  
25 about the money, that may be shown to the jury and may  
26 be argued to the jury.  
27 The last two or three items, maybe three  
28 or four, deal with dollar amounts; and I'm going to take

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1 the position that the language prohibiting the use of  
2 that document really focuses on what amounts were  
3 settled upon and agreed upon, and I am not going to  
4 permit those numbers to come in by being read from that  
5 document.  
6 MR. LEITER: Your Honor, if I may, I have not  
7 had an opportunity, either yesterday or this morning, to  
8 respond to Mr. Piuze's arguments about confidentiality.  
9 He's wrong and he's wrong.  
10 THE COURT: No, he's not saying confidentiality.  
11 MR. LEITER: About what was not supposed to be  
12 used in a trial.  
13 THE COURT: Okay. And you will have that  
14 opportunity right now. I apologize.  
15 MR. LEITER: Okay. The clause that he points to  
16 is a clause in an agreement between the states and the  
17 tobacco companies about the use of the agreement between  
18 the parties.  
19 There is a specific provision in the  
20 agreement. It is on page 137. It is called "Intended  
21 Beneficiaries." I will read it in a second, but my  
22 point is this: Third parties, including this plaintiff,  
23 have no rights in the agreement. They have no right to  
24 stand up in court and suggest that the agreement should  
25 not be used.  
26 That's not what the agreement provides.  
27 It doesn't create any right for this plaintiff to  
28 prohibit the use of this document in a trial.

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1 The provision reads:  
2 "No portion of this  
3 agreement shall provide any  
4 rights to or be enforceable by  
5 any person or entity that is not  
6 a settling State or a released  
7 party."  
8 The released parties being the tobacco  
9 companies and the other defendants.  
10 "No settling State may  
11 assign or otherwise convey any  
12 right to enforce any provision of  
13 this agreement."  
14 The provision that Mr. Piuze --  
15 THE COURT: Give me just one moment.  
16 (A pause in the proceedings.)  
17 THE COURT: I'm sorry.  
18 MR. LEITER: The provision that Mr. Piuze was  
19 referring to over the last couple of days was a  
20 provision concerning when the parties may use the  
21 agreement and when they may not as between them.  
22 There is nothing in the agreement that  
23 prohibits the use of the agreement in this trial, and  
24 there is nothing in the agreement and nothing anywhere

25 else that creates in Mrs. Bullock any rights under the  
26 agreement, including the right to assert that it not be  
27 used in a trial. That is a right that belongs to the  
28 parties to the agreement only.

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1 THE COURT: And one of those parties is Philip  
2 Morris and that party is waiving that?

3 MR. LEITER: Yes.

4 THE COURT: All right. Go ahead. I'm sorry.

5 MR. LEITER: That's my point. That is why the  
6 agreement may be used in this trial. That is why the  
7 dollar amounts may be used as well; and I have one other  
8 thing to say about the dollar amounts.

9 THE COURT: Okay.

10 MR. LEITER: We are offering, as I mentioned  
11 yesterday when your Honor asked what documents we would  
12 be putting in to show dollar amounts, we have three  
13 documents to offer this morning. They are all 10-Ks of  
14 Philip Morris Companies for the years 1999, 2000, and  
15 2001 filed with the SEC which contain information about  
16 the payments made so far by Philip Morris under the  
17 agreement.

18 Those also bear no restrictions on  
19 confidentiality. They are all public documents. In  
20 fact, they are all documents that Mr. Johnson testified  
21 yesterday he relied on. He found them when he was doing  
22 his research.

23 So our evidence that we would like to  
24 offer for the prohibitions is the agreement for the  
25 payments. It is both the agreement and the three 10-K  
26 forms which set forth what has been paid.

27 THE COURT: What does it say in the agreement as  
28 to the payments?

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1 MR. LEITER: The agreement sets out the formula  
2 under which the payments would be made.

3 THE COURT: Read it to me, if you would.

4 MR. LEITER: Yes. It's actually several pages  
5 which appear on pages -- beginning on page 54 of the  
6 agreement.

7 Section A talks about payments being made  
8 into escrow; and Section B, I won't read it in its  
9 entirety, beginning on page 55, begins:

10 "On the second business day  
11 after the escrow court approves  
12 and retains jurisdiction over the  
13 escrow agreement, each original  
14 participating manufacturer shall  
15 severally paid to the escrow  
16 agent" -- and I'm skipping some  
17 parenthetical language -- "the  
18 base amount of \$2,400,000,000.  
19 On January 10, 2000, each  
20 original participating  
21 manufacturer shall severally pay  
22 to the escrow agent, its relative  
23 market share of the base amount  
24 of \$2,472,000,000."

25 And it continues on with specific amounts  
26 for 2001, 2002, and 2003; and then beginning on page 57  
27 is a chart setting base amounts through the year 2017  
28 with a general provision for 2018 and thereafter in

4087



1 perpetuity.  
2 The precise amount to be paid depends on a  
3 number of factors that are not specifically set forth in  
4 the agreement, including market share, volume of sales,  
5 and the like.  
6 THE COURT: Okay. Now, again, see if I  
7 understand what you are saying. It is your desire to  
8 offer information regarding the dollar amount to show  
9 the jury that a penalty has been imposed against Philip  
10 Morris --  
11 MR. LEITER: No, your Honor.  
12 THE COURT: -- as a result of the sentence?  
13 MR. LEITER: No, your Honor. And that brings me  
14 to Mr. Piuze's stipulation --  
15 THE COURT: Okay.  
16 MR. LEITER: -- in which he misstated our  
17 position.  
18 THE COURT: Okay.  
19 MR. LEITER: Our position was not that we would  
20 not sign it. Our position was and is that we will sign  
21 it if there were two small language changes made to it.  
22 THE COURT: And they are?  
23 MR. LEITER: It has been stipulated -- this is  
24 what was proposed -- that the Master Settlement  
25 Agreement, which is Exhibit 12391, does not provide any  
26 payments for personal injuries and does not provide any  
27 payments for punitive damages.  
28 We wanted to change the language "for  
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1 personal injuries" to "to individuals" because, in fact,  
2 these are payments for personal injuries, just  
3 indirectly.  
4 THE COURT: So --  
5 MR. LEITER: Let me finish the sentence, your  
6 Honor.  
7 We do not oppose the language that the  
8 Master Settlement Agreement does not provide payments  
9 for punitive damages.  
10 THE COURT: So you would add to that stipulation  
11 the words "to individuals" or "for individuals"?  
12 MR. LEITER: We would propose taking out "for  
13 personal injuries" and adding instead "does not provide  
14 any payments to individuals," which is what I assumed  
15 that Mr. Piuze wanted to argue.  
16 THE COURT: Let's just stop there for a moment.  
17 As amended, would that stipulation, just  
18 as far as it goes, be acceptable?  
19 MR. PIUZE: No. Because I don't -- I don't  
20 believe it's true.  
21 THE COURT: What part of it, of your  
22 stipulation, is not true?  
23 MR. PIUZE: Mine is true. These payments were  
24 not for personal injuries. These payments reimburse the  
25 State for health-care costs that they expended.  
26 THE COURT: You are getting ahead of me.  
27 They have offered to sign your stipulation  
28 changing the words "for personal injuries" to "to  
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1 people."  
2 MR. PIUZE: I know.  
3 THE COURT: What part of that is false?  
4 MR. PIUZE: It's not false. The "to people" is  
5 not false, but it's not complete, because these payments

6 were not for personal injuries. These were contractual  
7 payments.

8 THE COURT: Now you are getting into another  
9 phase which is what they were for; but as far as this  
10 goes, is there any part of that stipulation as suggested  
11 to be amended that you found that -- that you find to be  
12 incorrect?

13 MR. PIUZE: No. Just by omission of those  
14 words.

15 THE COURT: The words "for personal injury"?

16 MR. PIUZE: Yes.

17 THE COURT: But that's now an issue that --  
18 about which there is a dispute. You contend that the  
19 settlement agreement, A, contains no punitive damages,  
20 and they say you are right; and contained no moneys for  
21 individuals, and they say you are right; and you say and  
22 also it had nothing to do with allegations of personal  
23 injuries, and they say, oh, yes, it did, because that is  
24 really the raison d'etre, if you will, of why the  
25 settlement agreement was entered into, because of all  
26 the personal injuries.

27 And I know the two of you are going to  
28 argue back and forth on that, and we are not going to

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1 allow that argument to go on. You can do that in an  
2 appellate court, but not here.

3 MR. PIUZE: Your Honor, you know, I am here to  
4 give final argument to the jury, and I don't feel like  
5 arguing with Mr. Leiter, and I sure don't feel like  
6 prolonging this either.

7 THE COURT: Okay.

8 MR. PIUZE: But while I've just temporarily got  
9 the floor, just extremely briefly, let me do one last  
10 thing.

11 Yesterday the court allowed me to put in  
12 8564 as a court exhibit for identification.

13 THE COURT: Yes, you did.

14 MR. PIUZE: Which was Bible's statement to  
15 Congress about putting aside \$60 billion for punitive  
16 damages.

17 To make that complete for the Court of  
18 Appeals, I would like to put in 8565, realizing this is  
19 not for the jury.

20 THE COURT: I understand that.

21 MR. PIUZE: And 8565, your Honor, is the  
22 original proposed resolution; and in the original  
23 proposed resolution, at page 34, it flat-out states that  
24 the value of the settlement is 368.5 -- \$368.5 billion,  
25 and it got them off the hook for all past punitive  
26 damage adventures.

27 I am just putting that in so we can have a  
28 little context here so that when we see -- now, that was

4091

1 June '97 -- when we see that Bible gets up in January of  
2 '98, and he wasn't there personally, but Philip Morris  
3 turned this in to the United States Congress and said,  
4 "We valued," as part of this \$368 billion settlement,  
5 "We valued our punitive damage get-out-of-jail-free  
6 card," as it were, "at \$60 billion," it will have some  
7 context.

8 And the reason I'm saying that now is very  
9 simple. Here was a proposal, 8565. Here's how Philip  
10 Morris viewed it, 8564. What originally went down, the

11 actual Master Settlement Agreement that they want to put  
12 into evidence, along with the money, along with the  
13 money, came down to about \$246 billion including prior  
14 settlements.

15 \$100 billion-plus disappeared. The stuff  
16 for punitive damage disappear. The jury doesn't know  
17 any of this. They have no idea about the context in  
18 which this occurred. There is really, truly, honestly  
19 no foundation for this Master Settlement Agreement.

20 That thing -- that thing was hammered out  
21 by 50 attorneys general and all the tobacco -- I mean,  
22 all of these guns for the tobacco industry that have  
23 been working on this forever and ever and ever, and we  
24 have this obtuse, thick -- not obtuse -- opaque document  
25 that I can't understand half the time, and we are going  
26 to give it to the jury.

27 So sure, here's Mr. Leiter and I, in a  
28 way, quibbling, but isn't that just the point? This

4092

1 thing goes into the jury, as smart as they are, what are  
2 they going to do with this? They don't know what this  
3 money is for. They haven't been told what this money is  
4 for; and if that document doesn't say what the money is  
5 for, it shouldn't be in there and it really shouldn't be  
6 in there; and it doesn't get them out of jail free. It  
7 doesn't get them anything, because there's no payment --  
8 I mean, this is not a penalty and it's not compensation  
9 for Betty Bullock and it's not punitive damages and it's  
10 not a penalty, so why are we even talking about it? Why  
11 should they know that?

12 This is a side issue between these  
13 defendants, this defendant and their co-conspirators and  
14 all the states, and it's got nothing to do with this  
15 case.

16 Anyway, thanks for listening. I  
17 appreciate it.

18 THE COURT: All right. Can we -- here is what I  
19 propose that we are going to do, and we will do it on  
20 the record; and then you, Mr. Piuze, can determine which  
21 of these things will go before the jury.

22 First, your stipulation.

23 MR. LEITER: Your Honor, there was a second  
24 paragraph to Mr. Piuze's stipulation.

25 THE COURT: I guess --

26 MR. LEITER: It addresses most of the lengthy  
27 argument he just made.

28 THE COURT: Go ahead.

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1 MR. LEITER: And that second paragraph which  
2 Mr. Piuze is proposing is:

3 "It has been stipulated that  
4 the Master Settlement Agreement  
5 provides payments to the States  
6 for reimbursement of funds spent  
7 on health-care costs."

8 And what we said -- what I said to  
9 Mr. Piuze earlier was I would agree to that. I would  
10 like him to add at the end, "spent on health-care costs  
11 for individuals"; but with that addition, we agreed to  
12 that stipulation as well which addresses what he just  
13 argued.

14 THE COURT: Well, let me tell you what my goals  
15 are, and we are going to reach those goals very rapidly

16 either with your concurrence or without it.  
17 I too do not want to thrust upon this jury  
18 several hundred pages of settlement agreement; but if  
19 this is the only way that I can get that information to  
20 which I believe in fairness the defendants are entitled  
21 to before the jury, then I will have to do it that way.

22 The alternative is, number one, to reach  
23 a stipulation that -- putting the money issue aside for  
24 a moment -- that the particular prohibitions that have  
25 been articulated in this settlement agreement that you  
26 have read to me earlier are there and that the  
27 defendants can argue that those exist in there. That  
28 will obviate the necessity of the jury having to see the

4094

1 entire settlement agreement. Too much to wade through.  
2 So that's a short version.

3 If we cannot get a stipulation on that  
4 issue, then I will allow that document to go into the  
5 jury room and will allow you to read those portions that  
6 you have read on the record up to -- and not including  
7 the part about the money, just the prohibitions. You  
8 may read that during your argument.

9 So the -- and I don't care how you all  
10 work it out, just tell me which one you all want to do.

11 Mr. Piuze, you are first.

12 MR. PIUZE: Neutral.

13 THE COURT: Okay. That's what we are going to  
14 do then. It will not go into the jury -- excuse me, I  
15 said it backwards.

16 It will go into the jury, but you will  
17 tell the jury in your argument what particular points  
18 are of significance and that those particular points --  
19 and you will tell them where they can find them if they  
20 want to, and they can go and look for those on the pages  
21 that they want to see.

22 If Mr. Piuze wants to point them to other  
23 language in that same document, he may do so.

24 As to the issue of the dollars, I want to  
25 return to the stipulation. Let's start with that; and  
26 your position is that the changing of those words would  
27 be such that you would be willing to sign that, and then  
28 we will get to the issue of whether or not the dollar

4095

1 amounts that were given under the terms of the  
2 stipulation should also be told to the jury.

3 Again, I may have misunderstood you, but  
4 the reason that you want to -- will you tell me again  
5 why it is you want to be able to give an exact figure to  
6 the jury as to what the settlement agreement required  
7 Philip Morris to do together with the 10-Ks to show what  
8 they have already done.

9 Incidentally, Mr. Piuze, do you have an  
10 objection to the 10-Ks? And what is it?

11 MR. PIUZE: I do have an objection. They are  
12 gargantuan. Whatever probative value there is to those  
13 10-Ks is far outweighed by the prejudicial aspect that  
14 the jury can find by looking through these gargantuan  
15 documents.

16 THE COURT: Tell me what the prejudice is. Help  
17 me out. When you say it's outweighed by its prejudice,  
18 what's the prejudice?

19 MR. PIUZE: Well, they talk about the money they  
20 give to charity and what good guys they are and all

21 other kinds of things like that, which has nothing at  
22 all to do with this case.

23 THE COURT: So then are you prepared to  
24 stipulate to that portion of the 10-K that deals with  
25 the amounts that they are paying under the settlement?

26 MR. PIUZE: No, your Honor, because my -- I  
27 appreciate your giving me a forum and I appreciate you  
28 hearing me out; but my position is money that Philip

4096

1 Morris paid under that settlement is totally irrelevant  
2 to anything we are doing here, completely irrelevant.

3 THE COURT: Mr. Piuze, that philosophy that you  
4 have has come through loud and clear. I understand  
5 that.

6 MR. PIUZE: Okay.

7 THE COURT: And I am sure you will say that to  
8 the jury and you will be given the opportunity to; but  
9 it must be clear to you now that I am going to allow the  
10 jury to hear the amounts that have been paid to the  
11 states since the signing of the settlement.

12 MR. PIUZE: Well, actually, I got to make an  
13 admission. It wasn't really clear, and I thought I  
14 definitely had your ear on this issue and you were going  
15 my way with it; but I guess I misread you, because it  
16 wasn't clear to me at all. It really wasn't, and I mean  
17 it really, really wasn't.

18 Not only is this stuff -- so it will be  
19 the last time I'll say it. Not only is it totally  
20 irrelevant, but it is dynamite prejudicial, because --  
21 dynamite prejudicial, because all it can do is provide  
22 them a forum for saying something like, "We are making  
23 amends," which they are not, or "We are good guys,"  
24 which they are not, or somehow -- just like they wanted  
25 their expert to say -- the expert wasn't allowed to do  
26 it so Mr. Bleakley will do it on closing argument --  
27 "Gee, whiz, look it. We have been punished enough"; and  
28 if I'm not using those exact words, I am getting the

4097

1 thought across.

2 THE COURT: Mr. Piuze, do you really think that  
3 when Mr. Bleakley gets up after your argument, he is  
4 going to say, "You know, he's right," and then sit  
5 down? Is that what you expect him to say?

6 (Laughter.)

7 MR. PIUZE: Well, in light of the defense they  
8 put on in this case, I wouldn't be surprised, your  
9 Honor.

10 THE COURT: Well, it isn't going to happen.

11 MR. PIUZE: Let's see, how many witnesses from  
12 the defense have we had in this case?

13 THE COURT: Look, you are not making your final  
14 argument here. All I want to do is try to even the  
15 playing field.

16 MR. PIUZE: Well, you know, your Honor,  
17 respectfully, I fully understand that. I mean, I have  
18 been at this game -- we all have -- for long time. I  
19 understand that. I understand that. That's what this  
20 is.

21 They are getting hammered, and we don't  
22 want to hammer them too hard so that they are pounded so  
23 far into the ground that you are going to really,  
24 really, really use a derrick to pull them out of that  
25 hole. I understand that, but just the same -- I mean, I

26 do understand that.  
27 But just the same, there are rules of  
28 evidence; and I just can't get away from -- no matter

4098

1 how we do it, no matter how you twist it, no matter how  
2 you put it in the light, Bill Lockyer is the Attorney  
3 General of this State and he did not come down here and  
4 give you permission to put that thing into evidence.

5 And it says you can't use this in any  
6 trial. I mean, it flat-out says it. It can't be more  
7 clear; and maybe Philip Morris isn't here saying they  
8 can do it, but Bill Lockyer hasn't come down and said  
9 it.

10 Anyway, thanks for listening. So I'm not  
11 going to say any more; but, yeah, I mean, I feel  
12 strongly about it, and I don't feel strongly about it  
13 because -- hey, what the heck. I feel strongly about  
14 it, but thank you for listening. I appreciate it, and I  
15 won't say it again.

16 THE COURT: May I see the unsigned stipulations?

17 MR. LEITER: Yes, your Honor.

18 THE COURT: Would you hand it to Mrs. Perez, who  
19 will bring it here.

20 (A pause in the proceedings.)

21 THE COURT: Now, I have a document here that I  
22 would like to have marked for identification; and that  
23 is the stipulation that was proffered by the plaintiff  
24 and is unsigned and it is in handwriting.

25 Do we have a number?

26 Mr. Piuze, this is your document. I  
27 assume you have a number.

28 MR. PIUZE: Well, for a stip I didn't, but I

4099

1 will give the court a number. The next number will be  
2 8566.

3 THE COURT: 8566 is a handwritten stipulation by  
4 Mr. Piuze, unsigned.

5  
6 \* (Marked for identification Joint  
7 Exhibit 8566, document.)  
8

9 THE COURT: Mr. Piuze, is it your intention at  
10 this time to withdraw this?

11 MR. PIUZE: No, your Honor.

12 THE COURT: Okay. So you are proffering it  
13 to -- in the form in which it exists to the defendants,  
14 correct?

15 MR. PIUZE: Yes.

16 THE COURT: All right. I have in my hand  
17 Exhibit 8566. Do the defendants at this time decline to  
18 sign it as it is?

19 MR. LEITER: We decline to sign it as it is, and  
20 we have offered to sign it with the minor modifications  
21 that I have previously stated.

22 THE COURT: And the language that you are  
23 talking about -- and let's put it again on the record --  
24 the part that you want removed is the phrase "for  
25 personal injuries"?

26 MR. LEITER: Yes, your Honor.

27 THE COURT: In the first paragraph?

28 MR. LEITER: In the first paragraph.

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1 THE COURT: Okay.

2 MR. LEITER: And we would propose to substitute  
3 the words "to individuals."

4 THE COURT: Instead of "for personal injuries"?

5 MR. LEITER: Instead of "for personal  
6 injuries."

7 THE COURT: All right. I am going to -- I will  
8 print the words "to individuals." Okay.

9 And the second part?

10 MR. LEITER: The second paragraph was acceptable  
11 with the addition of the words at the end -- and I don't  
12 have it in front of me, but the words would be --

13 THE COURT: Come get it.

14 MR. LEITER: The second paragraph, your Honor,  
15 would be acceptable to us with the addition at the end  
16 of the paragraph of the words "of individuals."

17 THE COURT: So that the second paragraph will  
18 now read:

19 "It has been stipulated that  
20 the Master Settlement Agreement  
21 provides payments to the States  
22 for reimbursement of funds spent  
23 on health-care costs of  
24 individuals"?

25 MR. LEITER: Yes, your Honor.

26 THE COURT: Okay. It is the court's intention  
27 to read this to the jury in the form that it now takes  
28 and identify it as that to which the defendants have

4101

1 stipulated.

2 MR. LEITER: Very well, your Honor.

3 THE COURT: Okay. I would like this to be -- I  
4 don't know that we need it typed up, but I will read it.

5 So that now brings us to the following  
6 rulings: One, the defendants are permitted to read from  
7 the settlement agreement the prohibitions on conduct  
8 that deal with the settlement agreement; and they may --  
9 and it will be read, this stipulation, and no other  
10 dollar figures are going to be read. That's where we  
11 are.

12 MR. LEITER: Okay. May I make my record on the  
13 dollar figures, your Honor?

14 THE COURT: You bet you can.

15 MR. LEITER: Which I have not have had a chance  
16 to do.

17 THE COURT: You may certainly do that.

18 MR. LEITER: Here is why the dollar figures are  
19 relevant and important.

20 First, although they are not punitive  
21 damage figures, under California law the jury is  
22 entitled to consider the deterrent effect of  
23 compensatory damages paid. One example of a case is  
24 Lane versus Hughes Aircraft, 22 Cal.4th 405; Mirkin  
25 versus Williamson, a different Mirkin case, 5 Cal.4th, I  
26 believe, 1082; and the Supreme Court case, Browning  
27 Ferris Industries versus Kelco Disposal, 492 U.S. 257.

28 The jury is entitled to hear that one

4102

1 reason Philip Morris has been deterred is that it is  
2 paying compensatory damages. It is utterly relevant to  
3 the jury's consideration; and we, with all respect,  
4 believe it is improper to exclude that information from  
5 the jury in mitigation of any punitive damage award they  
6 may award in this case.

7           The second reason, your Honor, is that  
8 yesterday Mr. Piuze elicited from his witness,  
9 Mr. Johnson, that as of this moment, Philip Morris has  
10 not paid a penny in a judgment.

11           MR. PIUZE: That's not true.

12           MR. LEITER: That is inaccurate, and it is  
13 inaccurate because the Master Settlement Agreement,  
14 which settles lawsuits, is incorporated in judgments  
15 here in California and in 45 other states.

16           The payments that are being made under  
17 that agreement in settlement are being made pursuant to  
18 the judgment. It directly contradicts testimony that  
19 Mr. Piuze elicited from his witness yesterday.

20           THE COURT: All right. Mr. Piuze, you may  
21 respond to that.

22           MR. PIUZE: Gee, the way I recall it is  
23 Mr. Johnson said they never paid a penny -- I don't know  
24 if he said "a penny." They never paid a personal injury  
25 verdict. They never paid any money in punitive damages.

26           THE COURT: I recall similar to you. On the  
27 other hand, I also -- this is one of those wonderful  
28 things where a witness gratuitously gives an answer not

4103

1 in response to a question and just spurts something  
2 out.

3           I would ask the court reporter, at a  
4 break, to find me that language; and I will read it to  
5 the jury and I will instruct them to disregard it and to  
6 strike it.

7           Anything else?

8           MR. BLEAKLEY: Your Honor?

9           THE COURT: Sure.

10           MR. BLEAKLEY: May I?

11           THE COURT: Absolutely.

12           MR. BLEAKLEY: I am not clear, other than what  
13 your Honor has said you are going to read to the jury,  
14 what is that we are entitled to say about the money that  
15 is called for under the settlement agreement and the  
16 money that has been paid.

17           THE COURT: You are, I assume -- I can't tell  
18 you what your argument is going to be -- but certainly  
19 there was a Master Settlement Agreement that provides  
20 for payments to the states for reimbursement of funds  
21 spent on health-care costs of individuals.

22           MR. BLEAKLEY: Okay.

23           THE COURT: You are going to argue that and you  
24 have stipulated to it.

25           If in your 10-Ks -- and nobody has shown  
26 me this yet. I keep asking, but I haven't seen them --

27           MR. LEITER: They are ready.

28           THE COURT: No, no. I don't want to see the

4104

1 whole 10-K.

2           If in the 10-K there is a specific amount  
3 that has been paid under the terms of the settlement  
4 agreement and has been announced in that public  
5 document, you need to show that to Mr. Piuze and to me;  
6 and if it's there, you can read that to them as well.

7           MR. BLEAKLEY: Well, there are two things that  
8 we would like to say to the jury. One is that the  
9 settlement agreement calls for the payment over a period  
10 of years of billions of dollars; and secondly, that  
11 Philip Morris has, in fact, already paid about



12 \$9 billion under that agreement.  
13 THE COURT: Okay. Here are the problems.  
14 MR. BLEAKLEY: That's all.  
15 THE COURT: Let's deal with the second one  
16 first. You say that Philip Morris has already paid  
17 \$9 billion. Where does it say that?  
18 MR. BLEAKLEY: In these 10-Ks.  
19 THE COURT: That was my invitation, to show that  
20 to Mr. Piuze --  
21 MR. BLEAKLEY: We have. We have shown that to  
22 him.  
23 THE COURT: Okay. And then show me the sentence  
24 that says that; and I have -- and I will hear from  
25 Mr. Piuze as to why they shouldn't hear that  
26 information, other than what he's already said, and I  
27 have heard that loud and clear.  
28 (A pause in the proceedings.)

4105

1 THE COURT: And I do agree with you that they're  
2 not going to put in the entire 10-K which goes into  
3 charities and other things that clearly are irrelevant.  
4 MR. LEITER: Okay. Your Honor, Exhibit 12387.  
5 THE CLERK: Is that a new exhibit, your Honor?  
6 MR. LEITER: Yes.  
7 THE COURT: Hold on. 12387 is the?  
8 MR. LEITER: 10-K of Philip Morris Companies for  
9 the fiscal year ended December 31, 2001.  
10 THE COURT: Okay.  
11 MR. LEITER: And I would like to show the court  
12 what is marked as page 28 of 82, which sets forth the  
13 fact of payments under the Master Settlement Agreement  
14 and includes the following sentence:  
15 "During the year ended  
16 December 31, 2001, P.M., Inc.  
17 recognized \$5.9 billion as part  
18 of cost of sales attributable to  
19 the foregoing settlement  
20 obligations."  
21 The foregoing settlement obligations  
22 described in the paragraph above are the master  
23 settlement.  
24 THE COURT: Let me look at that, if I may.  
25 MR. LEITER: Okay.  
26 THE COURT: Mr. Piuze, you have seen this?  
27 MR. BLEAKLEY: I actually haven't been given a  
28 document that points me right to the exact --

4106

1 THE COURT: There it is. You look at it first.  
2 Page 28.  
3 (A pause in the proceedings.)  
4 MR. PIUZE: Okay. I have seen it.  
5 THE COURT: Do you have any comments you want to  
6 put on the record?  
7 MR. PIUZE: I have put my comments on the  
8 record. I have nothing further to add.  
9 THE COURT: Okay.  
10 MR. PIUZE: Thank you for the invitation.  
11 (A pause in the proceedings.)  
12 THE COURT: In the page I have, page 28, is it  
13 my understanding that you wish to read that part that  
14 you have underlined in orange?  
15 MR. LEITER: We would either read it or simply  
16 tell the jury that that's the number.

17 THE COURT: The number being?  
18 MR. LEITER: The number booked in the year 2001  
19 in payment under the Master Settlement Agreement.  
20 THE COURT: Okay.  
21 (A pause in the proceedings.)  
22 THE COURT: Okay.  
23 MR. LEITER: The second document, your Honor --  
24 THE COURT: Let me make a notation here.  
25 MR. LEITER: Okay.  
26 THE COURT: Exhibit 12387, defendants may read  
27 from page 28, underlined portions.  
28

4107

1 \* (Marked for identification Joint  
2 Exhibit 12387, document.)  
3  
4 THE CLERK: But the document as such is not  
5 entered in evidence.  
6 THE COURT: But page 28 will be received. It  
7 will just not be shown to the jury. It is going to be  
8 read to the jury. So page 28 is now in evidence.  
9  
10 \* (Received in evidence Joint  
11 Exhibit 12387, document.)  
12  
13 THE COURT: Okay.  
14 MR. LEITER: The second document, your Honor, is  
15 Exhibit 12385.  
16 THE COURT: I'm sorry?  
17 MR. LEITER: 12385.  
18 THE COURT: Okay.  
19 MR. LEITER: It is the 10-K form for Philip  
20 Morris Companies, Inc. for the fiscal year ended  
21 December 31, 1999; and the portion that we are  
22 interested in, your Honor, is page 18 of 123, which  
23 indicates the earlier payment made by Philip Morris  
24 under the Master Settlement Agreement and the sentence  
25 reads as follows --  
26 THE COURT: That's also underlined in orange?  
27 MR. LEITER: It is orange, and I will hand it up  
28 in a moment. The sentence reads:

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1 "For the year ended  
2 December 31, 1998, P.M., Inc.  
3 recorded settlement charges of  
4 \$3.1 billion, which represented  
5 its share of up-front payments  
6 required under the settlement  
7 agreements."  
8 THE COURT: Okay. Page 18 is received in  
9 evidence.  
10  
11 \* (Received in evidence Joint  
12 Exhibit 12385, document.)  
13  
14 MR. LEITER: Thank you, your Honor.  
15 THE COURT: Thanks.  
16 MR. LEITER: So our record is clear, I would  
17 like to offer the settlement agreement, which is  
18 Exhibit 12391.  
19 THE CLERK: That is the Master Settlement  
20 Agreement?  
21 MR. LEITER: Yes.

22 THE COURT: I think it has been identified  
23 before. I could be wrong, but I think it is.  
24 MR. PIUZE: It was identified within the  
25 stipulation for sure.  
26 THE COURT: Yes, it is certainly within the  
27 stipulation, and it is received in evidence.  
28

4109

1 \* (Received in evidence Joint  
2 Exhibit 12391, document.)  
3  
4 MR. LEITER: Thank you, your Honor.  
5 And 12418 is the list of Master Settlement  
6 Agreement provisions that your Honor suggested we create  
7 yesterday and which I read a little earlier this  
8 morning.  
9 THE COURT: Is that something that you wish to  
10 have offered in evidence?  
11 MR. LEITER: Yes, your Honor.  
12 THE COURT: Is there an objection?  
13 MR. PIUZE: I must admit I am slightly lost  
14 right now. That's -- that's a guide to guide the jury  
15 to specific pages of the Master Settlement Agreement?  
16 THE COURT: Precisely.  
17 MR. PIUZE: Is the Master Settlement Agreement  
18 going into the jury?  
19 THE COURT: It is now.  
20 MR. PIUZE: Then I don't have an objection to  
21 that.  
22 THE COURT: Okay. It's received in evidence.  
23  
24 \* (Received in evidence Joint  
25 Exhibit 12418, document.)  
26  
27 MR. LEITER: Okay. And --  
28 THE CLERK: I'm sorry, your Honor?

4110

1 THE COURT: 12418 is a list of settlement  
2 provisions, and it is going to be received in evidence.  
3 MR. LEITER: Okay. Your Honor, one housekeeping  
4 matter to clean up from yesterday.  
5 THE COURT: Yes.  
6 MR. LEITER: Mr. Piuze had offered and the court  
7 had tentatively admitted 8563, which is the 1999 -- a  
8 portion of the 1999 annual report of Philip Morris.  
9 THE COURT: With one paragraph omitted.  
10 MR. LEITER: Right. I thought we had agreed to  
11 one page.  
12 THE COURT: Whatever it was.  
13 MR. LEITER: And the court had asked us whether  
14 we wanted to offer anything else from that document. We  
15 do not.  
16 THE COURT: Okay.  
17 THE CLERK: I'm sorry, your Honor. 8563 is  
18 marked for identification only.  
19 THE COURT: I know it is. Just give me a  
20 second.  
21 Mr. Piuze, have you removed the one  
22 paragraph from it? Because it is going to come into  
23 evidence and you have stipulated that that portion may  
24 be removed.  
25 MR. PIUZE: I have done more than that. I have  
26 removed everything from this page except for the one

27 sentence that I originally wanted to put in, and  
28 Mr. Leiter is in agreement with that.

4111

1 MR. LEITER: That's right.

2 THE COURT: Okay. So the document that you now  
3 have in your hand is the 8563 that we are going to admit  
4 in evidence?

5 MR. PIUZE: Yes. It will require during the  
6 break some more black-lining, but the answer is yes.

7 MR. LEITER: Which leaves the cover page and  
8 that one page we are talking about.

9 THE COURT: 8563 is received in evidence.

10  
11 \* (Received in evidence Joint  
12 Exhibit 8563, document.)  
13

14 THE CLERK: I'm sorry, your Honor. The  
15 original identification of 8563 was the Philip Morris  
16 Companies 1999 annual report. What is the new  
17 designation?

18 THE COURT: It is a portion of that report.  
19 It's not the whole report. It never was the whole  
20 report, just a portion thereof, correct?

21 MR. PIUZE: Yes.

22 MR. LEITER: It's the cover page and the one  
23 page we were talking about.

24 THE COURT: So 8563 is being received except  
25 that we are going to excise a portion of it. Okay?

26 MR. LEITER: One final point, your Honor, which  
27 is a -- just for our record, another point for our  
28 record, yesterday during Mr. Johnson's testimony, there

4112

1 were a couple of charts shown to him that I had not  
2 reviewed before, and I was slow on the uptake on an  
3 objection.

4 A couple of those charts contained  
5 financial information for the immunity period, 1988 to  
6 1998; and I want to assert for the record an objection  
7 to any use of financial information from that ten-year  
8 period in furtherance of a claim for punitive damages in  
9 this case.

10 THE COURT: Did you intend to use that as part  
11 of your argument for punitive damages?

12 MR. PIUZE: Sure, but not as a basis -- not as  
13 basis for liability. We have been through this long  
14 ago. I am not basing any Philip Morris liability on  
15 anything that occurred during that period.

16 THE COURT: Okay.

17 MR. PIUZE: But as far as how much money they  
18 got, I say it's fair game and that's my position.

19 THE COURT: Okay.

20 MR. PIUZE: May I make a comment, please? Just  
21 one?

22 THE COURT: Go ahead.

23 MR. PIUZE: It's -- the one thing we haven't  
24 heard from all these financial documents, which have now  
25 been cut down to part of a page, is that all these  
26 payments are tax deductible.

27 Philip Morris pays the State of California  
28 a billion bucks and takes a \$500 million write-off

4113

1 someplace. Why shouldn't the jury be told about that,  
2 Judge?

3 THE COURT: Well, is there a provision in the  
4 agreement, or do you have authority that tells me it's  
5 tax deductible?

6 MR. PIUZE: The Master Settlement Agreement says  
7 it's tax deductible.

8 THE COURT: If it says it in the Master  
9 Settlement Agreement, clearly I have just admitted it  
10 into evidence and you have the right to read that to the  
11 jury.

12 MR. PIUZE: Okay.

13 MR. LEITER: Your Honor, we would -- before he  
14 does that, we would need to have that provision pointed  
15 out to us. I'm not sure it's there.

16 THE COURT: He is not going to read it if it  
17 isn't there.

18 MR. LEITER: Okay.

19 THE COURT: So before it's read, you need to  
20 find it, you need to show it to counsel and to the  
21 court; but I don't have any problem with your -- if it's  
22 in there, you can read it.

23 Anything else before we bring out the  
24 jury?

25 MR. PIUZE: Yes.

26 THE COURT: Okay.

27 MR. PIUZE: I need three minutes.

28 THE COURT: It will take three minutes just to

4114

1 get them in here, so you go ahead. If you would like to  
2 take a short break, we can do that.

3 You need to put all these things in your  
4 books anyhow. Do you have them?

5 THE COURT LIAISON: Yes, your Honor.

6 THE COURT: Why don't you go into the jury room  
7 and hand them those documents. Tell them to put them in  
8 the --

9 THE COURT LIAISON: All their books are here.

10 THE COURT: Bring them out and then tell them  
11 that they can -- bring them out, and we'll all take a  
12 brief recess.

13  
14 (A recess was taken in the proceedings.)

15  
16 (The following proceedings were held  
17 in open court within the presence of  
18 the jury:)

19  
20 THE COURT: Okay. We have done quite a few  
21 things during the time that you have been in the jury  
22 room, some of which will be dealt with right now and  
23 some of which we will deal with as we move along.

24 We have received in evidence, a document  
25 that has been numbered 12391 and entitled, "A Master  
26 Settlement Agreement." It's a yea-thick agreement.

27 During final argument, the defendants, at  
28 least, will make reference to that document and cite you

4115

1 to particular lines and pages so that you are not going  
2 to have to wade through this 200 and whatever it is page  
3 document; but to the extent that you want to find  
4 certain things, they will be in there.

5 There is a list of settlement provisions,  
6 the things that are going to be read to you, and that's  
7 been labeled as 12418; and it may be that you may be

8 able to make reference to that and cross-check it and  
9 find what you need.

10 I will read you a stipulation in a little  
11 bit, probably -- well, I should read it to you before  
12 there is any argument.

13 Philip Morris has stipulated as follows:

14 The Master Settlement Agreement, which is  
15 Exhibit 12391, does not provide any payments to  
16 individuals and does not provide any payments for  
17 punitive damages.

18 The Master Settlement Agreement, Philip  
19 Morris stipulates, provides for payments to the states  
20 for reimbursement of funds spent on health-care costs of  
21 individuals, among other things. You will have read to  
22 you, and it was received in evidence, page 28 of  
23 Exhibit 12387, and page 28 is a 10-K report of Philip  
24 Morris' income for December 31, 2001. You will receive  
25 page 28. You don't have to go through the whole 10-K.

26 You will also receive page 18 of the 10-K  
27 for December 31, 1999, the previous year, and that has  
28 a number of 12385-18. It's page 18. So you are going

4116

1 to get those.

2 There was testimony yesterday from  
3 Mr. Johnson where he volunteered an answer not in  
4 response to a question; and I will, at a later time,  
5 find that language, read it to you, and instruct you to  
6 totally disregard it. It's non-responsive and it's just  
7 a statement that he made and it's not to be considered.

8 I will find it and you will have to try to  
9 recall it.

10 So having said all of those things before  
11 final argument, first, I would admonish and remind the  
12 court attache' that she is still under oath and it is  
13 still designated that she will take care of you and  
14 place you in the jury room and allow you to deliberate.

15 The other thing I will remind you is that  
16 if anyone has any cell phones or any other devices that  
17 are capable of communicating with the outside world,  
18 they will be given to her before you go in and begin  
19 your deliberations.

20 We will hold them and at the appropriate  
21 breaks or at the appropriate time, we can give them back  
22 to you.

23 The instructions that you are going to  
24 receive are few, and you hopefully have a copy of these  
25 in your book, and we have made some modifications.

26 The first reads as follows:

27 You must now determine whether you should  
28 award punitive damages against defendant Philip Morris

4117

1 for the sake of example and by way of punishment.  
2 Whether punitive damages should be imposed, and if so,  
3 the amount thereof, is left to your sound discretion,  
4 exercised without passion or prejudice.

5 If you determine that punitive damages  
6 should be assessed against a defendant, consider the  
7 following matters in arriving at your award:

8 (1) The reprehensibility of the conduct  
9 of the defendant.

10 (2) The amount of the punitive damages  
11 which will have a deterrent effect on the defendant in  
12 the light of the defendant's financial condition.

13 (3) That the punitive damages must bear a  
14 reasonable relation to the injury, harm, or damage  
15 actually suffered by the plaintiff.

16 You may not allow your decision regarding  
17 punitive damages to be affected by the fact that  
18 defendant Philip Morris, Incorporated is a corporation.

19 From January 1, 1988 through December 31,  
20 1997, California law provided immunity to tobacco  
21 manufacturers such as Philip Morris. You may not impose  
22 punitive damages on plaintiff's claims based on conduct  
23 between January 1, 1988 and December 31, 1997.

24 You may not impose punitive damages based  
25 upon a failure of defendant to adequately warn about the  
26 health risks of cigarettes after July 1, 1969.

27 And finally you see a jury verdict, and it  
28 says:

4118

1 We, the jury in the above entitled action,  
2 find the following special verdict on the questions  
3 submitted to us:

4 Question No. 1: Shall punitive damages be  
5 assessed against the defendant?

6 That must be answered "yes" or "no."

7 And secondly, If your answer is "yes,"  
8 answer the next question. If your answer is "no," have  
9 your foreperson sign and date this special verdict.

10 Question No. 2: We assess punitive  
11 damages against the defendant as follows:

12 And then a single line that says  
13 "amount."

14 It's then dated and signed by your  
15 foreperson. Once again, it takes nine jurors to have a  
16 verdict.

17 The same foreperson will remain and the  
18 same jurors will go into the jury room and the remainder  
19 of the jurors will be sent down to the jury assembly  
20 room.

21 Having so stated and with the one  
22 exception that I will at some point before you retire  
23 find the language; and the hour is now ten of 10:00,  
24 Mr. Piuze will address you. We all apologize for the  
25 delay, but we had to do that in order to make some  
26 rulings on some motions and to get some of these things  
27 in evidence before you.

28 Mr. Piuze, the floor is yours.

4119

1 MR. PIUZE: Thanks.

2 Thanks for getting up early.

3 (Laughter.)

4

5 \* OPENING ARGUMENT

6

7 BY MR. PIUZE:

8 The first of you came up for jury  
9 selection on August 5. At the end of this week, that  
10 will be nine weeks of trial. In nine weeks a couple of  
11 things have happened. A thousand people, 100 people a  
12 day, have been dying of tobacco-related illness in this  
13 state every day.

14 I know some of you are good at math. I  
15 know at least one of you teaches math. So a lot of this  
16 is going to be math, but it's pretty easy. 41,800  
17 people die a year from tobacco-related illnesses in the

18 state of California. That's 365 days in a year. Round  
19 it off, it's over 100 a day.

20 So every day that we have been in trial,  
21 including weekends, including three-day weekends,  
22 including Labor Day, because death doesn't take a day  
23 off, over 100 Californians have died of tobacco-related  
24 illnesses.

25 The figure for lung cancer -- this is  
26 according to Dr. Burns. Dr. Burns is one of those  
27 public health officials that us plaintiffs attorneys met  
28 with in Boston.

4120

1 According to Dr. Burns, there's  
2 13,000-some-odd deaths per year in California due to  
3 lung cancer, and he attributes 11,500 of those to  
4 smoking cigarettes; and every day that we have been in  
5 trial here and weekends, that toll has marched on and on  
6 and on.

7 Something else happened while we have been  
8 in trial. Every week Philip Morris domestic tobacco has  
9 made \$100 million. So the first week we were in trial,  
10 they made \$100 million. This week as we are in trial,  
11 they are going to make another \$100 million.

12 And so during the course of this trial, if  
13 somehow there was a verdict on Friday, which I'm not  
14 advocating one way or another over Thursday or Monday or  
15 any other day, but if it was Friday and it was nine  
16 weeks, 900 million bucks.

17 So in a nine-week trial, we are dealing  
18 with over 100 deaths a day and almost a billion bucks.  
19 These figures, both the money and the human toll, are so  
20 far beyond what we -- and I am going to except myself  
21 here momentarily because I thought about this before --  
22 these things are so far out of our frame of reference  
23 that I'm going to bring them into our frame of reference  
24 here.

25 Less than 3,000 people died in the Twin  
26 Towers terrorist attack. When I say "less than," that  
27 sounds really weird because what an unbelievable human  
28 toll; but in the terms we are talking about here, just

4121

1 so we can bring this down, that's a 30-day toll in  
2 California alone right now from smoking cigarettes.

3 Philip Morris has 50 percent of the  
4 market, 51, actually. Every cigarette sold in this  
5 state, in the country, Philip Morris sells 51 out of 100  
6 of them.

7 Philip Morris has been involved in the  
8 conspiracy with the other tobacco companies since the  
9 first week in 1954, at the latest. Each one of the  
10 conspirators is responsible for each one of the other  
11 conspirator's actions. You have unanimously found  
12 Philip Morris guilty of fraud and liable of fraud on  
13 either four or five different counts unanimously.

14 You have unanimously found that Philip  
15 Morris is deserving of punishment because their conduct  
16 was fraudulent and malicious and oppressive.

17 It is inconceivable, before this trial  
18 began, that anyone could have thought about coming in  
19 here and heard the horrors that were discussed in this  
20 case without an excuse, without a defense, without an  
21 apology.

22 Those of us who -- and I know some of the



23 jurors because of the information we got on the  
24 questionnaires and in voir dire are included here, but  
25 those of us who used to smoke and haven't for 10 years  
26 or 15 years or 20 years aren't immune and we could be  
27 part of the toll.

28 Because there's a 20-year latency period,

4122

1 even if smoking was to magically stop in this state  
2 tomorrow, for the next 20 years or more, people when  
3 they cough, who smoked enough, will have to think,  
4 "Is my number up? Am I now a statistic?"

5 Sometimes -- sometimes some people think  
6 that they are powerless corks -- and I think this about  
7 myself -- on an ocean bobbing around in this huge world  
8 with forces that we can't even imagine at work.

9 And in many, many, many, many, many, many,  
10 ways it's so true, and you have seen part of that here  
11 during this trial where 60 million people, 60 million  
12 Americans -- and I can only talk about Americans in this  
13 trial. My conversation stops at our national borders,  
14 and I'm really concentrating on California in the trial,  
15 and my main conversation stops at the California  
16 borders.

17 But 60 million people in this country were  
18 lied to year after year after year after year, decade  
19 after decade, on something as important as their lives.  
20 If I could write the script to satisfy the most paranoid  
21 person about "there are people out to get me," I might  
22 write this script; but you are not powerless now.

23 A lot of you, in one way or another, deal  
24 with kids. Some of you are teachers. Some of you are  
25 former teachers. Some of you are future teachers. Some  
26 of you deal with kids on professional levels having to  
27 do with their psychological and social well-being.  
28 Some of you volunteer your time with kids.

4123

1 The undisputed testimony in this trial is  
2 that like 90 percent of all smokers start when they are  
3 14 to 17 years old, just like Betty Bullock did. Philip  
4 Morris, the largest marketing company in the world, this  
5 isn't news to them. Over the course of the last 50  
6 years, this stuff has been targeted at kids to get them  
7 started when they are kids and get them hooked when they  
8 are kids and keep them for life or as long as they can  
9 be kept and drain their money away from them.

10 So, yeah, this is fraud; and before I talk  
11 in a second about the remedies for fraud, just for a  
12 second --

13 Mr. Goldstein, would you just -- less than  
14 two minutes, just help me out here. I don't need a  
15 stand. Thanks.

16 We are dealing with a half a century, and  
17 that's a real long time, half a century. I want to  
18 start off dealing with one year. Excuse me.

19 It's a long way. It's a long, long way  
20 from here to there, but I want to start off just dealing  
21 with this one year, 2000. One year. Just a year.

22 Now, I will pick this up for a second.  
23 Just come on down here. Don't be bashful. Bring it up  
24 close. Okay?

25 In that one year -- there's two lines  
26 there. That line up above, the reason it's green is  
27 because it's money; and that line up above there is

28 \$5.2 billion. \$5.232 billion after the Master

4124

1 Settlement Agreement with the States. \$5.2 billion into  
2 Philip Morris' pocket. 100 million bucks a week.

3 Anyway, that green line and that black  
4 line go together. You can't have one without the  
5 other. You can't have the green without the black. You  
6 can't have the money without the death. You can't have  
7 the money without the death.

8 So those of us who have, will, and do deal  
9 with kids, not just on a professional basis but our own  
10 kids, our own grand-kids, maybe even the neighbors' kids,  
11 want to give those kids a little civics lesson? What do  
12 you do? What do you do when you finally, after chasing  
13 someone for 50 years, 48 years, and they dodge and they  
14 weave and they duck and they lie and then they lie some  
15 more and then they lie some more; and they get so good  
16 about lying that they send their CEO up in front of a  
17 jury in Minnesota in 1998, and the CEO of the largest  
18 consumer product company in the world says, "Gee, I  
19 don't know if one person has ever died from smoking."

20 And then after all that happens and they  
21 finally get run down after 50 years putting money in the  
22 bank, \$100 billion, and you can multiply out the deaths,  
23 they don't put on a defense.

24 So does that mean we pat them on the head  
25 and say, "Okay. It's all a big misunderstanding"?

26 Now, one of the things that happens here  
27 is that there is a message that's going to be sent to  
28 the next CEOs out there of the next -- I -- I --

4125

1 I started to say I can't believe this will happen again,  
2 but history repeats.

3 But what about the next group of CEOs from  
4 the next Enrons and the next WorldComs and the next  
5 Global Crossings? And so let's just make believe they  
6 ain't dealing with death anymore; they are only dealing  
7 with people's retirement funds, pension funds, hundreds  
8 of billions of dollars that they are playing around  
9 with. They better hear -- they better hear what happens  
10 when they get run down and when they get caught,  
11 because if Philip Morris is given a free ride here or a  
12 slap on the wrist, it's a green light.

13 Hopefully, it ain't going to be a green  
14 light to death, but it will be a green light to fraud.  
15 Anyway, there may be more of this later.

16 Thank you for your help.

17 How did this happen? How could this  
18 happen? Look back on it and see these documents here.  
19 What's been going on? Why was this allowed? And why  
20 didn't someone stand up and do something about this?  
21 The people who did stand up, why couldn't they do  
22 something about this? Why did the tobacco cartel keep  
23 going and going and going?

24 I just want to show a couple of documents  
25 today, not a lot. Here, this is the Roper proposal from  
26 May of 1972, and this is where The Tobacco Institute --

27 By the way, this Master Settlement  
28 Agreement that you're going to see, one of the things

4126

1 the Master Settlement Agreement did is they abolished  
2 The Tobacco Institute. They abolished the Committee for  
3 Tobacco Research. They killed it dead; but I don't know

4 if the stake has been put through their heart, and I  
5 wouldn't doubt their ability to come back.

6 But anyway, here it is. Looking back  
7 20 years, the tobacco industry has defended itself in  
8 litigation, politics, and public opinion; and this  
9 strategy has only been a holding strategy consisting of  
10 purposely creating doubt about the health charges  
11 without coming out and saying so in so many words.

12 And that they were going to aim -- the  
13 tobacco industry was going to aim its message at its  
14 supporters, tobacco state congressmen and heavy smokers;  
15 and the tobacco industry was going to try to get tobacco  
16 state congressmen and heavy smokers to understand that  
17 smoking may not be killing people, even though they knew  
18 smoking was killing people.

19 And even though the only witness that they  
20 brought to this trial said that all the time he was a  
21 research scientist down at Philip Morris -- which  
22 started just round this year, if I'm not mistaken -- no  
23 one ever, ever took these positions, scientists never  
24 said anything like this.

25 Anyway, we -- I'm not going to show this  
26 again. You can see it sitting there right now. Once  
27 upon a time, since you were -- people said to their kids  
28 "study hard, work hard, be a good citizen, apply

4127

1 yourself, you'll get ahead. Who knows, maybe some day  
2 you can head a big company."

3 We got three equal branches of government,  
4 and the tobacco state congressmen sit in one of them and  
5 the President sits in another one and the judicial  
6 branch of the government is a third separate equal  
7 branch of government, and today we are the judicial  
8 branch of the government.

9 For this case, we are the judicial branch  
10 of the government; equal. Equal to the congressmen.  
11 Equal to the President. We are it.

12 Next week we won't be it anymore. Next  
13 week for this case, the judicial branch of the  
14 government will be Judge Ettinger; and next year the  
15 judicial branch of the government for this case will be  
16 some court of appeals and so on, because I guess we  
17 heard pretty clearly yesterday, if there was ever any  
18 doubt about it, this case ain't going to be over when  
19 your verdict comes in.

20 These cases are long, hard, seemingly  
21 never-ending struggles, not for the faint of heart; but  
22 today and during the deliberations, we have been chosen  
23 for this; and we, for this case, are a co-equal branch  
24 of the government of this country.

25 What message should go up from here?  
26 What -- there are reporters here. It's an important  
27 case. There aren't very many of these cases. There are  
28 less than a handful of these cases tried in this state.

4128

1 What message do you choose as a co-equal branch of the  
2 government to send out of this room?

3 And people are going to be listening, not  
4 just in the Philip Morris boardroom in New York City,  
5 and not just in other tobacco company board rooms, but  
6 people are going to be listening in all of the  
7 boardrooms.

8 So what do you do about fraud? Fraud is

9 theft. It's pure and simple. When you go back in the  
10 jury room, you will still have the essential elements of  
11 fraud. Take a look at them. There's either four or  
12 five of them; but it's lying, cheating, and stealing.  
13 Plain and simple. No two ways about it. Lying,  
14 cheating, and stealing.

15 If someone gets caught lying and cheating  
16 and stealing, should the person have to give back what  
17 he or she or it -- because Philip Morris Corporation is  
18 a person in the eyes of the law -- stole? Should the  
19 ill-gotten gains of fraud stay in their bank account?

20 Should the ill-gotten gains of fraud be  
21 shaken out of them? Because here's a pretty simple  
22 concept. See, the numbers are so big, the damage is so  
23 big, the company is so big, that sometimes it's easy to  
24 lose sight of how easy it really is.

25 Putting aside life and death, putting  
26 aside lung cancer, putting aside all that stuff, if the  
27 small-time drug dealer sold some stuff under false  
28 pretenses and it was fraud -- let's say it was a \$100

4129

1 transaction, just 100 bucks. I guess the remedy is to  
2 get the 100 bucks back.

3 Well, you got documents in the jury room  
4 that are still there. There are Philip Morris  
5 executives that admit that they are selling drugs; and  
6 of course, the whole story is they were selling drugs  
7 forever; and, of course, the whole story is this is the  
8 world's largest drug dealer here; and like all good drug  
9 dealers, Philip Morris has laundered its money.

10 How has it laundered its money? How about  
11 Miller Brewing Company? How's that for a little bobble?  
12 It isn't like going out and buying a boat. How about a  
13 brewing company? How about Nabisco? Kraft?

14 And the way it all works here and the law  
15 that we are governed by and I'm governed by, if I give  
16 the best closing argument in the history of the world  
17 and you decided to take back every single penny that  
18 Philip Morris had fraudulently taken, under our law  
19 they'd still be left with Miller, because I can't ask  
20 you to touch that. They'd still be left with Kraft,  
21 because I can't ask you to touch that. They'd still be  
22 left with Nabisco, because I can't ask you to touch  
23 that; and they'd still be left with International  
24 Tobacco, because I can't ask you to touch that and I  
25 won't and don't and for the record, don't.

26 All of those companies were bought with  
27 money that was fraudulently taken and they're immune.

28 So we've got an economist who comes in

4130

1 here unchallenged; and I'm proud to have been in Boston  
2 with him in April. I don't apologize for that; and I'm  
3 proud to have been there with public health officials,  
4 and I don't apologize for that.

5 And unchallenged, he breaks out what the  
6 financial condition of Philip Morris tobacco company is.  
7 The financial condition of Philip Morris tobacco  
8 company, the domestic tobacco company is this: Based on  
9 the sales of the entire parent corporation, our  
10 defendant here is responsible for \$5.2 billion of profit  
11 per year, is responsible for \$25 billion in sales per  
12 year.

13 Did that mean I've talked for an hour?

14 THE COURT LIAISON: No. You have 60 minutes  
15 left.

16 MR. PIUZE: Thank you very much.

17 Inconceivable numbers. We don't deal with  
18 numbers like that. They don't mean anything. They are  
19 too large; but please remember -- because I'm about to  
20 bring them home, I hope -- Philip Morris is a person.  
21 Philip Morris is a corporation. It's a person in the  
22 eyes of the law, treated like a person. It's in the  
23 jury instructions. Philip Morris is to be treated like  
24 a person.

25 And Philip Morris, I guess we all agreed a  
26 long time ago, has personal responsibility, just like  
27 the rest of us do.

28 Now, the average -- this is math, ratios.

4131

1 The average, the median -- excuse me. The median family  
2 income in this state is 47,000 bucks a year; and the  
3 median family income in this city is 36,000 bucks a  
4 year; and I want to compare the average family in the  
5 city or the state to Philip Morris and just get a couple  
6 of ratios just to bring Philip Morris' gigantic numbers  
7 down to our people numbers to help me make some sense of  
8 what to do here.

9 First of all, in comparing Philip Morris'  
10 money that it makes to what the average household makes  
11 here in the city or the state, the first question  
12 arises: Do we compare it to profits or do we compare it  
13 to revenue? Because you see when the average family in  
14 this city makes 36,000 bucks a year, it doesn't put it  
15 in the bank as profit. It buys some food. It pays the  
16 rent. It pays their car payment and does all those  
17 other things and it pays taxes.

18 And when it's all said and done, maybe the  
19 average family or the median family in this city doesn't  
20 have a whole lot of money left over when it's all done;  
21 and so the question is: Do we compare the \$36,000 to  
22 that 25 billion? Or do we compare it to pure profit?

23 Let's start with the smaller way. I'm  
24 going to talk a little bit about both.

25 Rounding off \$47,000 a year, rounding it  
26 off to make it magically 52,000 a year, in other words,  
27 if I took the median income for the families in the  
28 state and bumped it up 5,000 bucks a year, that means

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1 Philip Morris would make as much as 1 million median  
2 families.

3 So every -- a different way of putting it  
4 is every dollar the median family has, Philip Morris has  
5 got \$1 million; and a different way of putting that is  
6 if the median family buys a cup of coffee for a buck,  
7 Philip Morris' equivalent is a million bucks. If the  
8 median family gets summoned for jury duty and parks in  
9 the lot for 15 bucks -- and I know you don't have to pay  
10 it -- the equivalent for Philip Morris is \$15 million.

11 In the city of Los Angeles the median  
12 income is not that high. It's \$36,000 a year; and the  
13 ratio of 36,000 into that gigantic number is about one  
14 and a half; and so the dollar cup of coffee is one and a  
15 half million bucks to Philip Morris. A million and a  
16 half dollars is the equivalent of us buying a cup of  
17 coffee.

18 Parking is the equivalent of \$22 million.

19 So money that we deal with day by day by day when  
20 translated into Philip Morris equivalence, is a lot of  
21 money.

22 How about diamond lane violations?  
23 Because I'd like you, please, to compare what you have  
24 heard here to something really, really, really bad.  
25 Like a California resident getting in the diamond lane  
26 with no one in the car except the driver and getting  
27 caught. \$271 minimum for that infraction. So the State  
28 of California says you drive in the diamond lane all by

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1 your lonesome and you get caught, you got to pay a  
2 minimum of \$271.

3 Good people do that. People do that  
4 sometimes when they are in a big hurry. They decide to  
5 take a chance. Sometimes they are get caught. I hope  
6 that smile didn't mean you did it.

7 A Philip Morris diamond lane violation is  
8 271 million bucks when you do a ratio of the average  
9 median -- excuse me -- median family income in  
10 California. It's 27 million bucks for a diamond lane  
11 violation.

12 And if you do the ratio of a family, a  
13 median family income here in Los Angeles city, \$36,000 a  
14 year, is 27 plus half of 27, \$40 million for a diamond  
15 lane violation.

16 I want to do another example before I  
17 move on. I was reminded about this the other day by one  
18 of my kids who said, "Sometimes when we didn't used to  
19 do stuff fast enough, you'd fine us a quarter." That  
20 was before inflation, but I did. If you should do  
21 something, if I asked you twice and you didn't do it, a  
22 quarter.

23 When some of us -- I know some people,  
24 when their kids don't do things right, they get  
25 grounded. Some people, they get their allowance taken  
26 away for a week; but just think, please, about something  
27 a kid does where you want to teach him or her a lesson  
28 and you say, "I'm taking your allowance for a week."

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1 Not killing the dog, not beating up the  
2 kid next door, not stealing stuff from the store, maybe  
3 just missing taking out the trash two days in a row,  
4 but that's a week's allowance.

5 For these folks here, a hundred million  
6 bucks.

7 So anyway, you all get the point? In  
8 order to punish Philip Morris or deter Philip Morris or  
9 set an example for future Philip Morris or tell those  
10 people out in society who want to be the next crop of  
11 CEOs to rip off people's life savings, if you're caught,  
12 you got to pay. If you're caught, you've got to be  
13 punished. If you're caught, you can't just say, "You  
14 know what? We've made some mistakes, but I'm not going  
15 to defend them."

16 That's not a very good lesson to go out of  
17 this courtroom. It's not a very good lesson for young  
18 kids in the society. It's not a very good lesson for  
19 anyone and it green lights fraud.

20 And I want to talk a little bit about this  
21 Master Settlement Agreement just a little bit before I  
22 move on into some hard numbers here.

23 In the same year that Bible shamelessly

24 perjured himself up there in Minnesota, Philip Morris  
25 and the other tobacco companies signed onto this Master  
26 Settlement Agreement; and they didn't do it because they  
27 decided to become Boy Scouts, Girl Scouts, changed  
28 people.

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1                   They did it because they have 50 State  
2 Attorneys General after them. Finally, a fair fight.  
3 Not Mrs. Smith versus Philip Morris anymore; not  
4 Mrs. Bullock versus Philip Morris anymore; and not  
5 Mrs. Boeken versus Philip Morris anymore. 50 States  
6 Attorneys General lined up against the tobacco industry  
7 and now a fair fight.

8                   Nowhere on that Master Settlement  
9 Agreement, nowhere will you see an admission of  
10 responsibility for any wrongdoing. Nowhere in there  
11 will you see an "I'm sorry" to one single victim any  
12 where, any time, any place.

13                   What you will see in there is, "Gee, we  
14 won't do it anymore. We don't admit that we did it; but  
15 if somehow we did it, we won't do it anymore."

16                   And the Master Settlement Agreement calls  
17 for payments of big bucks. It calls for payments by the  
18 tobacco industry over the next 25 years of something in  
19 the vicinity of -- I think in round numbers, 200 million  
20 to 250 -- excuse me -- that was a cup of coffee, right?  
21 200 billion to 250 billion; and I think the real numbers  
22 are 206 billion to 246 billion.

23                   Philip Morris has got half of the market.  
24 Under that agreement, they have to pay for half of that.

25                   These payments are for health-care costs  
26 that all the states of the United States incurred taking  
27 care of dying smokers over the years; and, of course,  
28 all of this money is not being paid now. This money is

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1 being paid over a long, long, long period of time.

2                   And the present cash value -- remember  
3 when Mr. Johnson was up there yesterday and he was  
4 saying, "If we take these numbers that Philip Morris  
5 made way back in the Fifties, we have to elevate them to  
6 bring them up into today's dollars"? This is the  
7 reverse. This is the other side of the slope.

8                   From today's money, if you're paying with  
9 today's money, 25 years down the line, you're paying  
10 something like a quarter on the dollar; but anyway,  
11 here's what happened. Here's what happened to Philip  
12 Morris when it made that deal.

13                   This is what the deal did for Philip  
14 Morris. This is sales, '67 to 2001; and in 1998, which  
15 was the year of the settlement, Philip Morris sold --  
16 see that? 1998, if you follow that up, it's just over  
17 \$15 billion worth of cigarettes, and they made that  
18 settlement with the attorneys general.

19                   And look what happened in 1999 and how  
20 they sold almost \$20 billion worth of cigarettes; and  
21 2000, \$22 billion worth of cigarettes; and 2001,  
22 \$25 billion worth of cigarettes; and I guarantee you,  
23 that isn't because so many extra people decided to take  
24 up smoking.

25                   The reason they made so much extra money  
26 after the Master Settlement Agreement was because for  
27 those of us who smoke, those of you who smoke, the price  
28 of cigarettes went up dramatically.

1 And here's what the Master Settlement  
2 Agreement did to Philip Morris' income profit. The  
3 profit in '93, '94, '95, '96, '97, I think the high  
4 watermark was in 1997 and it was over \$4 billion; and  
5 then the year after the settlement agreement, Master  
6 Settlement Agreement, the profit dropped down to about  
7 one and a half billion bucks.

8 But then look what happened. That Master  
9 Settlement Agreement has propelled profits past the  
10 \$5 billion mark. In 1999, 2000, and 2001, the profits  
11 were higher than they have ever, ever, ever been; and  
12 this is after signing onto this settlement agreement;  
13 and this is because the price of cigarettes was  
14 dramatically jacked up to pay for the settlement  
15 agreement.

16 Or -- these two things are in evidence.  
17 This isn't, but it's a little chart we did. This just  
18 shows revenue. '98. This is sales, '98. In 1998 the  
19 sales were on a steady uphill. Look at that nice little  
20 line there, just a nice steady uphill. Excuse me. I'm  
21 pointing to the wrong place.

22 1998, right there; and that's what the  
23 Master Settlement Agreement did to sales after that sent  
24 them skyrocketing right through the roof.

25 And that's what the Master Settlement  
26 Agreement did to income. After a one-year dip, they are  
27 making 5 billion bucks a year.

28 So after I sit down here, if some how,

1 some way someone intimates that because Philip Morris  
2 got run down by the 50 attorneys general and put in a  
3 corner and was made to say "uncle" and agreed to the  
4 settlement, that that's somehow punishment for  
5 mitigation, baloney.

6 THE COURT: Would this be a good time to take a  
7 morning break?

8 MR. PIUZE: Not quite, but thank you. Almost.  
9 Almost. I'm going to switch subjects.

10 This is what Philip Morris said in its  
11 1999 annual report. Comparing '99 with '98. This will  
12 be in evidence. Just this teeny little thing.

13 During 1999 Philip Morris, Inc.'s  
14 operating revenues increased \$4.3 billion, which is 28  
15 percent over 1998 due primarily to pricing.  
16 \$5.5 billion largely related to tobacco litigation  
17 settlements.

18 So Philip Morris told the shareholder, "We  
19 made the settlement, this master settlement, and what a  
20 good deal."

21 I'll take that break. Thank you very much.

22 THE COURT: Okay. Ladies and gentlemen, we will  
23 take a 15-minute break. You are admonished not to  
24 discuss this case amongst yourselves or with anyone  
25 else. Do not form or express any opinion until it's  
26 finally submitted to you.

27 See you back in 15 minutes.

1 (A recess was taken in the proceedings.)

2  
3 (The following proceedings were held  
4 in open court within the presence of



5 the jury:)  
6  
7 THE COURT: Before you begin, Mr. Piuze, I told  
8 the jurors --  
9 MR. PIUZE: Your Honor, before you do that, I  
10 think -- if you are going to do that now, we should  
11 approach right now.  
12 THE COURT: All right. You may do so.  
13  
14 (The following proceedings were held  
15 at sidebar:)  
16  
17 THE COURT: It is my intention to say to the  
18 jury that I was in error; that the question to which I  
19 referred was asked without objection and the answer that  
20 appears here was given and the witness was  
21 cross-examined.  
22 MR. LEITER: I don't have any problem with that;  
23 but your Honor does not plan to read the question and  
24 answer again, do you? I don't see any reason to  
25 reemphasize it if your Honor can simply say you have  
26 checked the record and there is nothing you need to  
27 instruct them on.  
28 THE COURT: Either way.

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1 MR. PIUZE: I don't think you have to read this.  
2 I won't press that, but I think you should say when you  
3 mentioned before that Mr. Johnson had volunteered  
4 something, you were going to strike it, that you were in  
5 error.  
6 THE COURT: That's what I thought I said at the  
7 outset.  
8 MR. LEITER: That's fine. Thank you.  
9 THE COURT: All right.

10  
11 (The following proceedings were held  
12 in open court within the presence of  
13 the jury:)  
14

15 THE COURT: Okay. We got to do something about  
16 this chart.

17 MR. PIUZE: I will take it down for now, but I  
18 have to use it for about a five-minute run, your Honor.  
19 I have no other place to put it.

20 THE COURT: You've got to do better than that.  
21 As to my comments this morning regarding  
22 the testimony of a witness, I have reviewed the  
23 transcript and I found that I was in error and that the  
24 question was an appropriate question. It was asked.  
25 There was no objection. An answer was given and later  
26 on there was cross-examination.

27 So you are not going to have to disregard  
28 anything.

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1 All right.  
2 MR. PIUZE: Thank you.  
3 THE COURT: All right. Mr. Piuze, you are to  
4 resume your argument.  
5 MR. PIUZE: Thank you.  
6 I'd appreciate if someone would write  
7 these down. This isn't going into the jury room. There  
8 is a small version, a chart that Mr. Johnson used  
9 yesterday, and it shows exactly how much money was made

10 every year in dollars, adjusted dollars. You will have  
11 that, but it would be nice to write some of this down.  
12 2001. 2000, \$5.5 billion in income;  
13 \$23 billion in revenue.  
14 1992, \$6.5 billion in income; \$15 billion  
15 in revenue.  
16 1987 -- the reason I put that up there is  
17 I don't want to cover this up, because in 1972 they  
18 said, "For the last 20 years, this has been our motto."  
19 That should never be covered up. You should never  
20 forget that. Philip Morris should never be allowed to  
21 forget it.  
22 1987, 4 billion -- four and a quarter  
23 billion dollars income; almost \$12 billion in revenue.  
24 I don't want to cover that up either.  
25 1985, three and a third billion dollars in income;  
26 almost \$11 billion in revenue.  
27 That's the year after the president of The  
28 Tobacco Institute went to the United States Congress,

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1 which is 34 years after Richard Doll said smoking causes  
2 lung cancer; and 1984 is still the year when they told  
3 the United States Congress, "We need a lot more research  
4 because we don't know what causes cancer yet."  
5 1972, \$800 million in operating income and  
6 \$5 billion in revenue.  
7 And because we cannot have green -- we  
8 can't just have the green. The green doesn't work all  
9 by itself.

10 (A pause in the proceedings.)

11 MR. PIUZE: There's a 20-year incubation  
12 period. We have been chosen at this time, at this  
13 place, to do something about this. It is our duty to do  
14 something about this. It's my duty to be here and tell  
15 you what I think you should do; that it's your duty --  
16 it's your duty to do something about this.

17 This is staggering. It's beyond belief.

18 Margaret Meade, some of you may know, is a  
19 very, very, very famous anthropologist. She once said,  
20 "Never doubt that a small group of thoughtful citizens  
21 can change the world. Indeed, it is the only thing that  
22 ever has."

23 Now, I feel honored to be in this time and  
24 this place now. I feel horrified that I have to do it.  
25 I feel horrified that this ever unfolded.

26 Earlier this morning I said, how did this  
27 happen? How did this happen? Greed. Money over  
28 health, money over life, on a colossal, unimaginable

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1 scale.

2 The amount of suffering and needless loss  
3 of human life is staggering beyond belief. There's  
4 nothing I could possibly say to do it justice.

5 Richard Doll did not fly over here for the  
6 heck of it; and Neal Benowitz and David Burns and  
7 Michael Cummings, and Sam Hammar and Paul Slovic and  
8 Marvin Goldberg, people who are from absolute,  
9 unequivocal, world-class, best in the world, down to  
10 mere department heads in major U.S. universities have  
11 come here as part of their duty.

12 And most of these people are members of  
13 the so-called public health community.

14 Here is the biggest public health calamity

15 this country has ever seen, and the fact that this was  
16 done knowingly astounds.

17 If someone gets caught in the scheme of  
18 fraud, they should give back every single penny. If  
19 they don't give back every single penny, it's a green  
20 light. The problem with this case is we are dealing  
21 with such large pennies, that astounds.

22 100 billion -- \$100 billion was pocketed.  
23 A perfectly legitimate empire was spawned and which is  
24 untouchable.

25 I want -- no matter what number I say, no  
26 matter what number I say, it can't -- it can't be  
27 enough, because the numbers I'm going to talk about are  
28 simply giving back ill-gotten gains. Out in the real

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1 world with smaller, less colossal fraud schemes, in  
2 addition to giving back, there's usually punishment on  
3 top of that.

4 There's a question on the jury  
5 questionnaire, strange question. I never knew what it  
6 really meant, but "Does anyone think the country took a  
7 wrong turn?" Some people, yes; some people, no;  
8 whatever.

9 I think it can be argued that the moral  
10 values of this country, at least in high levels, has  
11 gone to heck. This is the worst of the worst of the  
12 worst example, because this isn't just stealing money.  
13 It isn't lying and cheating and stealing just for money,  
14 not to belittle the fact that people get their pension  
15 funds wiped out and they are out of jobs and they're  
16 penniless and their stocks go down. This is human life  
17 today.

18 Anyway, the judge read an instruction,  
19 punitive damages must be based upon the -- how bad the  
20 acts are. This is off the scale. Punitive damages must  
21 be based in light of the defendants' financial condition  
22 so it will be a deterrent on future acts; and if this  
23 defendant stands up and says, "Gee-whiz, we are good  
24 boys now. We have changed our stripes," please remember  
25 you've got documents still in the jury room where The  
26 Tobacco Institute wrote to a U.S. congressman and said,  
27 "I've polled all of our member organization and no one  
28 is targeting kids"; and you've got the Philip Morris

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1 documents from after that showing they are going after  
2 12-year-olds.

3 You've also got documents in the jury room  
4 that is sort of an advertising code of ethics about what  
5 they will and won't advertise; and then you take a look  
6 at some of the advertisements you've seen here; and, of  
7 course, you've got the big boss of the big company  
8 flat-out lying about the most bottom-line stuff.

9 I wouldn't trust them. You shouldn't  
10 trust them. Fool me once, fool me twice, how about fool  
11 me for 50 years?

12 And the last thing the judge mentioned is  
13 that the punitive damages have to bear a reasonable  
14 relationship to the damages sustained by Betty Bullock,  
15 whatever that means.

16 And, of course, that is stuff that  
17 lawyers, appellate lawyers, and judges and appellate  
18 judges talk about, but that's not today. Today we are  
19 the equal branch of government; and regardless of

20 whatever happens -- and this is a true fact --  
21 regardless of whatever happens, your voice is  
22 important. Your voice is important for the judges to  
23 come to hear.  
24 Those judges that come and sit in the  
25 Supreme Court in Washington, or wherever they sit, it is  
26 important that they hear your voice. You are an equal  
27 branch of the government today for this case, because  
28 Lord knows, some of the other branches failed.

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1 Betty Bullock lost -- I'm going to suggest  
2 two things. A diamond lane violation, \$271 million. A  
3 cup of coffee, \$10 or \$15 million. It's nothing.  
4 Betty Bullock has lost 20 percent of her life.

5 From the jury instructions you got in  
6 there, you know that her life expectancy for a normal  
7 female her age would get her to be around 83, 84. She  
8 just turned 64. She lost 20 years out of 84. She lost  
9 a quarter of her life.

10 Take back a quarter, one quarter. Do you  
11 know how big a number that is? \$20 billion. Take it  
12 back. Does it matter if there are 65 other pending  
13 cases in California, which is what you heard?

14 Gee-whiz, what's going to happen to those  
15 cases? People going to die? People going to give up?  
16 People going to get thrown out of court? People not  
17 going to have me or someone like me. People going to  
18 run out of money. People going to throw in the towel.

19 Don't -- please don't depend on some other  
20 jury some other place some other time to do the job  
21 that's required now; and to show you what a pitifully  
22 small number that 65 is, 65 outstanding lawsuits in this  
23 state, 100 people died yesterday, today.

24 In the whole history of all of this over  
25 the last few years -- there's been a couple of verdicts  
26 here -- and in the whole history of all of this, there's  
27 been a couple of verdicts elsewhere and they will be  
28 appealed until there is no further place to appeal them,

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1 to the Supreme Intergalactic Court.

2 This isn't messing around. These  
3 world-class expert witnesses from the public health  
4 community did not come here to mess around. Betty  
5 Bullock knew darn well on the day she signed on the  
6 dotted line she would never see a penny in her lifetime,  
7 no way, no how.

8 But she didn't mind getting jacked  
9 around. Good for her. She gave up some of her valuable  
10 remaining time on earth to get even, or try.

11 So I've got two alternatives. The numbers  
12 are gigantic. What happened here is gigantic. What  
13 happened here can never be tolerated again, ever. This  
14 is our case, our duty, our time.

15 I've already given you my first suggestion  
16 with a straight face, \$20 billion. I'm going to give  
17 you another suggestion. On my other closing argument, I  
18 kind of alluded to it. Who would sell poison to kill  
19 people slowly, painfully, over a long period of time?  
20 That's question one.

21 Who would make the stuff so attractive,  
22 especially to young kids, use the stuff and be  
23 glamorous, use the stuff and attract guys, and use the  
24 stuff and be macho, use the stuff and be a cowboy, use

25 the stuff and be cool, knowing it would kill? That's  
26 question number two.  
27 Who would make the stuff addictive so that  
28 once a kid started smoking it, 17-year-old girl from

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1 Kansas -- not in Kansas anymore -- a 17-year-old girl  
2 from South Dakota, so that once you start, you can't  
3 stop? That's question number three.

4 Who would take pleasure, not just in  
5 giving a poison and making it attractive and making it  
6 addictive, but taking your money for it? Question  
7 number four.

8 And who, when they were told and when it  
9 was in the spotlight and when people like Sir Richard  
10 Doll said, "This stuff kills," who would say, "Nah, we  
11 don't know that. We need more study. There's no proven  
12 cause. We have to look into this more. We need more  
13 research. Trust us. Hang on. We are going to take  
14 care of it. Keep buying it"? That's question number  
15 five.

16 And if you've answered all those questions  
17 or don't have an answer to all those questions, who  
18 would name the CEO of their company "Bible"? And so I  
19 have an alternative number.

20 If you want people to hear about this  
21 verdict, billion, million, thousand, I think an  
22 appropriate alternative number is \$6,666,666,666.

23 Thank you for listening to me. Thank you  
24 for Betty Bullock. Thank you for all of those folks who  
25 couldn't be here today. Thank you for these folks who  
26 aren't necessarily going to be here a lot longer.

27 This is the most serious thing I have ever  
28 done in my life. I sure appreciate the attention you

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1 paid. I sure appreciate the effort you have made. I  
2 sure appreciate your time. On behalf of me, Betty  
3 Bullock, thank you.

4 THE COURT: Thank you, Mr. Piuze. Would you  
5 take a moment and kind of slide that out of the way so  
6 that we will have free access to that aisle-way. Thank  
7 you.

8 All right. The defense may begin its  
9 final argument.

10 MR. BLEAKLEY: Thank you, your Honor.

11 THE COURT: You're welcome.

12  
13

14 MR. BLEAKLEY: Good morning, ladies and  
15 gentlemen.

16 (All respond.)

17  
18

Defendant CLOSING ARGUMENT Punitive Phase

19  
20

BY MR. BLEAKLEY:

21 This is probably the last time that I am  
22 going to have -- Mr. Leiter or I are going to have a  
23 chance to talk with you, and we both want to let you  
24 know that we appreciate the courtesy that you have  
25 extended to us personally during this case; and we want  
26 to tell you that we appreciate the attention that you  
27 have paid to our defense during the course of the case.

28 Obviously, we are disappointed in the

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1 result so far, not entirely surprised, but disappointed  
2 nonetheless. We are competitive people. We don't like  
3 to lose any more than anybody else does.

4 But just as I know and Mr. Leiter knows  
5 that you have rendered the verdict that you had in good  
6 faith based on what you believed the evidence showed, I  
7 hope you will understand that we have done our best to  
8 present here to you a defense in good faith on behalf of  
9 our client, Philip Morris, even though you did not agree  
10 with it.

11 Now you have your last decision to make in  
12 this case, which is whether and the extent to which you  
13 should award Mrs. Bullock punitive damages. This is a  
14 unique aspect of the American legal system that  
15 Mr. Piuze talked about in his argument here this  
16 morning.

17 I don't know of any other country in the  
18 world that asks juries of ordinary people to decide  
19 after they have rendered a verdict in a case whether and  
20 the extent to which a defendant should be punished.  
21 It's very unique, and we don't give you a whole lot of  
22 guidance on how to go about it.

23 The judge gave you four instructions.  
24 That isn't much. Basically, what he told you is that  
25 you must now determine whether you should award punitive  
26 damages. He told you that whether punitive damages  
27 should be imposed and the amount is left to your sound  
28 discretion exercised without passion or prejudice. That

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1 gives you a little bit of guidance but not a whole lot.

2 The instruction that the court gave you  
3 then goes on to say that if you determine that some  
4 punitive damages are appropriate, you're supposed to  
5 take into account three factors: The reprehensibility  
6 of the conduct of the defendant; the amount of punitive  
7 damages which will have a deterrent effect on the  
8 defendant in the light of defendant's financial  
9 condition; and thirdly, that the punitive damages must  
10 bear a reasonable relation to the injury, harm, or  
11 damage actually suffered by the plaintiff.

12 Mr. Piuze told you that in his view, that  
13 number should be \$20 billion or in the alternative,  
14 \$6.7 billion.

15 I'm sure it will come as no surprise to  
16 you that I'm going to argue that it shouldn't be  
17 \$20 billion or \$6.7 billion or anything like it; but I  
18 do want to make one thing clear right at the outset,  
19 which is that I'm not -- I'm not going to argue to you  
20 that you should award no punitive damages. I'm not  
21 going to come in here and tell you that that's what you  
22 should do in this case.

23 So you don't need to concern yourself  
24 about the first of the questions there, whether any  
25 punitive damages ought to be awarded.

26 Mr. Leiter and I made a decision when we  
27 defended this case, a decision that Mr. Piuze ridiculed  
28 in his closing argument a week ago and here again this

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1 morning, not to stand here and try to tell you that  
2 Philip Morris never did anything wrong. I'm sorry. If  
3 that was a bad thing to do, I apologize. It seemed to  
4 us like the right thing to do in this case.

5 What we did is we defended this case by

6 arguing that the things that Philip Morris did and said  
7 that you found to be wrongful did not actually cause  
8 Mrs. Bullock's injuries.

9 You rejected that defense. You had every  
10 right to. You deliberated for three and a half days  
11 before coming to a decision. We respect that, and I'm  
12 not going to come back in here now and tell you, "Oh, I  
13 didn't really mean that Philip Morris didn't do anything  
14 wrong." I'm not going to stand here and tell you that  
15 you should award no punitive damages.

16 But I am going to argue to you that  
17 awarding punitive damages to Mrs. Bullock in this case  
18 in the amounts that Mr. Piuze is talking about would not  
19 be right, it would not be just, it would not be justice,  
20 and it isn't necessary for a lot of reasons. What I  
21 want to do now is to go through those reasons.

22 Let's start with the three factors, the  
23 three matters that the instruction you received from the  
24 court tell you you are to take into account; and I'm  
25 not going to talk about, number one, the  
26 reprehensibility of the conduct of the defendant for the  
27 same reasons that Mr. Leiter and I did not try to defend  
28 that conduct during this trial.

4153

1 It seems to me you have already made that  
2 decision: What I want to talk about is, number (2) and  
3 number (3). And I want to talk first about the amount,  
4 if there is an amount, that will have a deterrent effect  
5 on the defendant in the light of defendants' financial  
6 condition, not, with all due respect, Enron or Global  
7 Crossing. This case is not about Enron and Global  
8 Crossing, although I can't blame Mr. Piuze for trying to  
9 tell you here this morning that you've got to send a  
10 message to Enron and Global Crossing. I can't blame him  
11 for trying that, but this isn't about Enron and Global  
12 Crossing.

13 This is about Philip Morris and cigarettes  
14 and the tobacco industry; and instruction number (2)  
15 says the matter that you should take into account is the  
16 amount of punitive damages, if any, which will have a  
17 deterrent effect on the defendant. That's Philip  
18 Morris.

19 Now, what does that mean "a deterrent  
20 effect on Philip Morris"? That means an amount of  
21 punitive damages, if any, necessary to keep Philip  
22 Morris from doing again what you found to be wrongful in  
23 this case. And as Mr. Piuze has told you over and over  
24 again, this case was a fraud case.

25 So what I ask you to consider and what I  
26 suggest to you that you should be taking into account is  
27 what is the likelihood, if any, that Philip Morris ever  
28 again would be able to get away with defrauding the

4154

1 American public about the health risks of smoking? Is  
2 there any?

3 Is there any likelihood that that would  
4 happen again or that they would get away with it if they  
5 tried, when you consider the world in which we live  
6 today and in which cigarettes are marketed and sold  
7 today?

8 First, Philip Morris now acknowledges  
9 without reservation, without qualification, without any  
10 hesitation whatsoever that the overwhelming medical

11 consensus, medical and scientific consensus in the world  
12 is that cigarette smoking causes disease and is  
13 addictive; without qualification.

14 Now, I'm not asking you to give Philip  
15 Morris any credit. I'm not asking for a pat on the  
16 back. That's not the point. The point is, it doesn't  
17 try today to tell people that smoking doesn't cause lung  
18 cancer and disease and that it isn't addictive. It  
19 doesn't try to do it and it hasn't tried to do it for  
20 some time; no doubt a lot longer than any of you on this  
21 jury believe is proper or appropriate.

22 But the fact of the matter is, publicly  
23 and unequalifiably -- remember during the course of the  
24 trial we showed you this exhibit, 7070. This is Philip  
25 Morris' website called "Health Issues for Smokers." A  
26 version of this website was put out by Philip Morris in  
27 1999 before this lawsuit was filed.

28 The one that you saw before in this case

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1 and this one says, "We agree with the overwhelming  
2 medical and scientific consensus," the only difference  
3 between this one and the one that was put out in 1999 is  
4 the words "We agree," because there were people who  
5 thought they should say "We agree," not just that there  
6 is an overwhelming consensus.

7 Either way, the point is that this public  
8 acknowledgement that smoking causes lung cancer and is  
9 addictive is known all over the world. It was widely  
10 publicized. It was publicized here in Los Angeles in  
11 the L.A. Times and on television stations. It has been  
12 written about in newspapers and magazines. Mrs. Bullock  
13 knows about it.

14 It does not just, ladies and gentlemen,  
15 acknowledge that Philip Morris agrees that cigarette  
16 smoking causes lung cancer and other diseases and is  
17 addictive but provides convenient access, through links  
18 on its website, to a whole host of information from the  
19 public health community elaborating in much more detail  
20 the evidence and the views of the public health  
21 community. You can see that here.

22 Highlights from Surgeon General's reports  
23 going back several years, actual copy of one of the  
24 Surgeon General's reports, information from the U.S.  
25 Centers for Disease Control, from the World Health  
26 Organization, and other public health officials.

27 I want to make the point again, ladies and  
28 gentlemen, I am not presenting this to you in any way in

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1 an attempt to claim credit. You found that Philip  
2 Morris should have done this a long time ago, and you  
3 are right; but the fact of the matter is they do today.

4 How do you think, even if they wanted to,  
5 they could ever take it back?

6 Secondly, today -- and you learned this  
7 during the plaintiff's presentation of its case -- which  
8 is that today, even apart from Philip Morris'  
9 acknowledgement that smoking is dangerous and addictive,  
10 everybody knows it now anyway.

11 Remember Dr. Slovic, the witness called by  
12 the plaintiff? Dr. Slovic acknowledged that today in a  
13 survey that he himself did, that people over-perceive  
14 the actual risks of contracting lung cancer from  
15 smoking. Remember that? He admitted when Mr. Leiter



16 cross-examined that his own survey showed that the  
17 survey respondents believed that more people get lung  
18 cancer than actually do.

19 The question is not what's true and what  
20 isn't true. The question is: Do people understand  
21 today and if Philip Morris for some reason tried to take  
22 back its admission that smoking causes lung cancer, is  
23 there any chance in the world today that anyone would  
24 believe them?

25 Thirdly, today -- these are all  
26 interrelated -- there are warnings everywhere, explicit  
27 warnings, not "Cigarette smoking may be hazardous to  
28 your health," but "Cigarette smoking causes lung cancer,

4157

1 emphysema, and heart disease." It's right on the pack  
2 and in all advertisements and a whole host of other  
3 warnings which rotate from time to time in accordance  
4 with the decision of the United States Congress.

5 But it isn't just the warnings that appear  
6 on the package and in advertisements. It's warnings  
7 about smoking that appear everywhere today on  
8 television, on billboards here in California. It's in  
9 our schools. Your and my kids are being taught it  
10 unequivocally, explicitly; cigarette smoking causes lung  
11 cancer today.

12 In addition, we have today all kinds of  
13 organizations watching every move Philip Morris and the  
14 other tobacco companies make. Every move, every  
15 statement is scrutinized. Every advertisement is  
16 scrutinized. People like the American Cancer Society,  
17 the Surgeon General, the Tobacco Litigation Project --  
18 let me just stop on that for a moment.

19 Neither Mr. Leiter nor I was suggesting  
20 when Mr. Leiter cross-examined Mr. Johnson yesterday  
21 that there was anything wrong about the fact that there  
22 is something called the Tobacco Litigation Project at  
23 Northeastern University in Boston and that plaintiffs  
24 lawyers go there and are taught how to present punitive  
25 damage cases to juries. That wasn't our point.

26 Our point was the one I'm making now,  
27 which is that the world is watching Philip Morris and  
28 the cigarette industry like no other industry in

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1 history. What do you think would happen if Philip  
2 Morris, for reasons I cannot fathom now, would try to  
3 take back its unequivocal, unqualified acknowledgement  
4 that cigarette smoking causes lung cancer and other  
5 diseases and that it's addictive?

6 I want to talk with you for just a second  
7 about one of the what I'm going to call watchdogs, one  
8 of the groups of people who are watching every move that  
9 Philip Morris makes; and that is the attorneys general  
10 of the 45 states that signed onto this Master Settlement  
11 Agreement.

12 There's nothing wrong with watchdogs.  
13 There's nothing wrong with the fact that people are  
14 keeping tabs on Philip Morris. To the contrary. That  
15 makes it extraordinarily unlikely that Philip Morris  
16 could ever go back to doing the things that you found in  
17 this case were unlawful.

18 Now let me talk about this Master  
19 Settlement Agreement here for a minute. This is it.  
20 You will have it in the jury room. I don't think you

21 want to read all of it because there's a lot of legalese  
22 in there, among other things; but this was the  
23 settlement with 45 states of lawsuits brought by those  
24 45 states against Philip Morris and Lorillard and  
25 Reynolds and Brown & Williamson and the other  
26 representatives of the tobacco industry back in the  
27 early to mid-1990s in which every single charge, every  
28 allegation against Philip Morris that has been made in

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1 this case was made by the State Attorneys General;  
2 fraud, misleading the people, targeting children. It  
3 was all in those cases, 45 of them.

4 And did that catch Philip Morris'  
5 attention? You bettcha it caught their attention.

6 Was that a good thing? Of course it was.

7 But the point is, what has happened as the  
8 result of that litigation? Those cases, those attorneys  
9 general, those plaintiffs had all the documents you saw  
10 in this trial. They had those videos that were shown to  
11 you. The experts who testified in this case --  
12 Dr. Burns, Dr. Benowitz, Dr. Cummings, all those -- they  
13 were involved in those State Attorneys' General cases.  
14 This wasn't something that happened for the first time  
15 in this courtroom, ladies and gentlemen.

16 Mr. Piuze is a very good lawyer, but he  
17 didn't invent this. These states brought the same kinds  
18 of cases against the tobacco industry that was brought  
19 here; seeking different relief, that's true. The states  
20 were seeking, in terms of damages, reimbursement for the  
21 money they paid out under the Medicare-related kinds of  
22 programs to people for their injuries; but that was only  
23 a little, little part of those cases, ladies and  
24 gentlemen.

25 A major part of those cases and this  
26 Master Settlement Agreement was to prevent Philip Morris  
27 and the other cigarette companies from ever again doing  
28 the very things that you found in this case to be

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1 unlawful.

2 And I'm going to show you some, not all,  
3 but it's important for you to understand. I'm probably  
4 going to show you more of the provisions of this  
5 agreement than you would like to see; but I think it's  
6 important for you to understand just how pervasive, how  
7 totally, it covers the waterfront.

8 There's a section of this agreement called  
9 "Permanent Relief." By the way, this exhibit is 12391.  
10 It's a huge document. I am working with a slightly  
11 smaller copy of it.

12 There is a section that begins on page 18  
13 called "Permanent Relief." This section of "Permanent  
14 Relief" in the Master Settlement Agreement goes on for  
15 the next 30 pages and has provision after provision of  
16 things that tobacco companies are forbidden to do under  
17 the Master Settlement Agreement and which provides the  
18 attorneys general of these states, which includes  
19 California, by the way, with power to enforce them; not  
20 just power to enforce them, but streamlines the  
21 procedures that can be used by the attorneys general to  
22 enforce this agreement.

23 The first of them is: Prohibition on  
24 Youth Targeting: No participating manufacturer may take  
25 any action, directly or indirectly, to target Youth

26 within settling state in the advertising -- that's the  
27 48 states, defined term -- promotion or marketing of  
28 Tobacco Products or take any action, the primary purpose

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1 of which is to initiate, maintain, or increase the  
2 incidence of Youth smoking.

3 (B) Ban on use of Cartoons: Beginning  
4 180 days after the MSA execution date -- which has long  
5 passed now -- no participating manufacturer may use or  
6 cause to be used any Cartoon in the advertising,  
7 promoting, packaging, or labeling of Tobacco Products.

8 Limitation of tobacco brand name  
9 sponsorships. You heard a little bit about this during  
10 trial. Remember my telling you and others telling you,  
11 witnesses telling you, that Philip Morris could no  
12 longer use merchandise with brand-name logos on it.  
13 They couldn't at bus stops and taxis. That's the  
14 product of this agreement, those restrictions.

15 Voluntary? No. Philip Morris taking any  
16 credit for it? No, that's not the point. The point is  
17 what is the world in which Philip Morris lives and  
18 operates today and whether it could ever do these things  
19 again; whether or not you need in this case to award a  
20 whopping amount of punitive damages to keep Philip  
21 Morris from doing these things in the future.

22 And what I'm trying to say to you is 45  
23 states have extracted from Philip Morris and the other  
24 tobacco companies an agreement, enforceable in court,  
25 what not to do.

26 Concerts. Events in which the intended  
27 audience is comprised of a significant percentage of  
28 youth, events in which any paid participants or contests

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1 are youth, any athletic event between opposing teams in  
2 any football, basketball, soccer, or hockey league --  
3 covering most of our major watched sports in this  
4 country.

5 Limited Sponsorships: No participating  
6 manufacturer may engage in more than one brand-name  
7 sponsorship in any 12-month period.

8 (3) Related Sponsorship Restrictions.  
9 Even with respect to those brand-name sponsorships,  
10 there's limitations on the advertising, the ability to  
11 use celebrities or other persons.

12 Sorry. I didn't put that in a way that  
13 you could actually see it.

14 I'm not going to read all of this to you.  
15 I'm going to read quite a bit of it to you; but I ask  
16 you when you go into the jury room, to look at it so you  
17 get a sense of just how pervasive these restrictions  
18 are.

19 Corporate Name Sponsorships, Naming Rights  
20 Prohibition: No participating manufacturer may enter  
21 into any agreement for the naming rights of any stadium  
22 or arena within a settling state.

23 The FedEx Field or McDonald's Field, but  
24 you can't be Philip Morris Stadium. That's not allowed  
25 in this agreement.

26 Elimination of outdoor advertising and  
27 transit advertisements. This is what I was talking  
28 about the other day. No advertisements on buses. No

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1 advertisements on taxis, at bus stops, or taxi stands.

2 No billboards. No billboard advertising of cigarettes  
3 anywhere in the United States anymore.

4 Ban on agreements inhibiting anti-tobacco  
5 advertising. Each of the companies agrees it will not  
6 enter in any agreement that prohibits a third party from  
7 selling, purchasing, or displaying advertising  
8 discouraging the use of tobacco products. Philip  
9 Morris and the other cigarette companies can't go out  
10 and enter into agreements pursuant to which they will  
11 refrain from anti-tobacco advertising.

12 Prohibition on Payments Related to  
13 Tobacco Products and Media. No consideration to any  
14 other person or entity to use or display, make reference  
15 to or use as a product any tobacco product.

16 Remember the discussion of sponsorship of  
17 the use of Philip Morris in movies? Not allowed any  
18 more.

19 Ban on tobacco and brand name advertising.  
20 Philip Morris cannot sell, license, or cause to be  
21 marketed or distributed apparel or merchandise, the sole  
22 function of which is to advertise tobacco.

23 Ban on youth access to free samples.  
24 Remember the evidence you heard about handing out  
25 samples to young people? Not allowed any more.

26 Ban on gifts to underage persons based on  
27 proof of purchase.

28 Limitation on third party use of brand

4164

1 names.

2 Minimum pack size of 20 cigarettes.  
3 That's to prevent the little sample packs from being  
4 handed out.

5 Then there's a whole section called,  
6 "Corporate Culture Commitments Related to Youth Access  
7 and Consumption." I'll let you read this. The whole  
8 idea is that imposed upon Philip Morris and the other  
9 manufacturers are a whole host of commitments,  
10 commitments to attempting to reduce youth access to and  
11 consumption of smoking.

12 Limitations to lobbying. Mr. Piuze  
13 pointed out to you this morning and you will see it in a  
14 moment in here, the Council for Tobacco Research gone.  
15 The Tobacco Institute gone forever; but it isn't just  
16 that they are gone. It is also that Philip Morris and  
17 the other cigarette companies in this agreement have  
18 agreed to refrain from any lobbying on smoking and  
19 health issues in the future.

20 THE COURT: This might be a good time to take a  
21 noon recess.

22 MR. BLEAKLEY: Okay.

23 THE COURT: Ladies and gentlemen, I am going to  
24 admonish you not to discuss this case amongst yourselves  
25 or with anyone else. Do not form or express any opinion  
26 on the matter until it's finally submitted to you.

27 And we will see you back at 1:30.  
28

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1 (The noon recess was taken until  
2 1:30 p.m. of the same day.)  
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1 Los Angeles, California October 2, 2002  
2 Case Number: BC249171  
3 Case Name: Bullock vs. Philip Morris  
4 Department 19 Hon. Warren L. Ettinger, Judge  
5 Reporter: Ruanne McArthur, CRR, CSR #2699  
6 Time: 1:30 p.m. Session  
7 Appearances: (As heretofore noted.)

8 -oOo-

9 (The following proceedings were held  
10 in open court outside the presence  
11 of the jury:)

12  
13 THE COURT: Okay. The record will reflect the  
14 court reporter is here.

15 First of all, one of the jurors has  
16 indicated that she has an interview tomorrow in the Hall  
17 of Administration at 12:30. It shouldn't be a problem  
18 because they will be breaking for -- from their  
19 deliberations; and then she says "I'm requesting to  
20 return from lunch at 1:40," which may be a problem; and  
21 so I just want to let you know that she may need to  
22 extend the lunch hour.

23 Do any of you have any objection if the  
24 other jurors agree to that?

25 MR. BLEAKLEY: Not as long as you tell us who  
26 the juror is.

27 THE COURT: I don't have any reason not to tell  
28 you. I would be happy to. It's juror number 13,

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1 Ms. Moore.

2 Now, you wanted to raise another issue,  
3 which I suspect is of more consequence than this.

4 MR. BLEAKLEY: Yes, your Honor.

5 At this time Philip Morris moves for a  
6 mistrial of the punitive damage phase of this case; and  
7 it is based upon a portion of argument that Mr. Piuze  
8 made this morning to the jury in which he expressly  
9 invited the jury to engage in jury nullification as to  
10 one of the requirements of a punitive damage award.  
11 That is the one that says that punitive damages must

12 bear a reasonable relation to the injury, harm, or  
13 damage actually suffered by the plaintiff.  
14 Mr. Piuze unequivocally, unquestionably,  
15 and clearly instructed the jury that they should ignore  
16 that requirement of the law and leave that to the  
17 appellate courts to decide at some future date; and in  
18 our view, that was improper and cannot be cured by an  
19 instruction; and as a result, we move for a mistrial at  
20 this time.

21 THE COURT: Mr. Piuze?

22 MR. PIUZE: I don't recall doing any such  
23 thing. I don't recall doing any such thing.

24 THE COURT: Anything else?

25 MR. PIUZE: No.

26 THE COURT: The court will take that request  
27 under submission. We will review the record and the  
28 argument of counsel, and we will give you a ruling as

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1 soon as I've had a chance to read it.

2 MR. BLEAKLEY: I understand that.

3 THE COURT: Thank you.

4 Anything else?

5 MR. BLEAKLEY: No, your Honor.

6 THE COURT: Are the jurors back?

7 THE COURT LIAISON: There's half and half. You  
8 said we were going to be on the record. I had to put  
9 them outside.

10 THE COURT: Get them in.

11 MR. BLEAKLEY: I'm sorry, your Honor. There is  
12 one more thing.

13 THE COURT: Yes.

14 MR. BLEAKLEY: I would like, in connection with  
15 this, since your Honor, I know, is going to take this  
16 matter under advisement, to call the court's attention  
17 to the decision of the Supreme Court of California in  
18 People versus Arasheik Wesley Williams, 25 Cal.4th 441,  
19 a decision in which, among other things, the Supreme  
20 Court said that jury nullification is contrary to our  
21 ideal of equal justice for all and permits both the  
22 prosecution's case and the defendant's faith to depend  
23 upon the whims of a particular jury rather than upon  
24 equal application of settled rules of law.

25 The court went on and said the basic rule  
26 that jurors are required to determine the facts and  
27 render a verdict in accordance with the court's  
28 instructions on the law.

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1 THE COURT: I'm familiar with that case, and I  
2 appreciate your giving it to me, in any event, and  
3 putting it on the record; but the ruling is going to  
4 turn on my reading of the argument and to determine the  
5 exact language that was used.

6 MR. BLEAKLEY: I understand.

7 THE COURT: But your motion stands submitted.

8 THE COURT LIAISON: We are missing one juror.

9 THE COURT: Okay.

10 (A pause in the proceedings.)

11 MR. PIUZE: As long as we are sort of doing  
12 nothing and waiting for a juror and there is a pregnant  
13 pause, I just note that Mr. Bleakley didn't make any  
14 request to the court in the alternative.

15 I still don't recall doing anything wrong.  
16 I don't think I did anything wrong, but I'm noting for

17 the record he has an alternative remedy which he hasn't  
18 chosen to ask for.  
19 THE COURT: Well, let me not worry about whether  
20 he does or doesn't have an alternative remedy. I think  
21 the place to begin is to review that portion of the  
22 transcript, number one.  
23 Number two, to show it to you so that you  
24 have a chance to respond, having actually seen the  
25 language, and then we can talk about that. I just  
26 don't --  
27 MR. BLEAKLEY: You didn't think I was waiving an  
28 alternative if it becomes appropriate.

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1 JUROR MARTINEZ: Sorry, your Honor.  
2 THE COURT: That's all right. We had other  
3 business to do and thank you for making a phone call.  
4 That was helpful.  
5 Okay. Now we can bring the jurors out.  
6  
7 (The following proceedings were held  
8 in open court within the presence of  
9 the jury:)  
10  
11 THE COURT: The record will reflect that the  
12 jury is back in the jury box. I will let you know that  
13 we are in the process of seeing what we can do to return  
14 the temperature to a normal level. We recognize that it  
15 is higher than it should be, since I have my little  
16 thermometer which tells me you are right, it is.  
17 The problem is, I think, that we turned it  
18 down and it just doesn't work in the courtroom. So it  
19 turns another courtroom's temperature down, and somebody  
20 there probably says, "Oh, my gosh, it's cold," and they  
21 turn it up; and so we have dueling thermostats, but we  
22 are going to do the best we can, and I thank you for  
23 your patience.  
24 Thank you. Mr. Bleakley.  
25 MR. BLEAKLEY: Thank you, your Honor.  
26  
27 CLOSING ARGUMENT (Continued)  
28

4171

1 MR. BLEAKLEY: Good afternoon, everyone.  
2 (All respond.)  
3 MR. BLEAKLEY: At the lunch break, I was talking  
4 with you about some of the terms of the Master  
5 Settlement Agreement, this agreement between a number of  
6 attorneys general and the tobacco industry, including  
7 Philip Morris.  
8 I misspoke in one respect and I want to  
9 clear that up. I said that 45 states, 45 attorneys  
10 general were signatories to this agreement. It was  
11 actually 46, and each of the other four states has  
12 entered into its own separate agreement with virtually  
13 the same provisions.  
14 You will remember that during the course  
15 of the trial, you learned -- and I told you again this  
16 morning, indeed, Mr. Piuze told you this morning -- that  
17 one of the terms of the Master Settlement Agreement was  
18 that The Tobacco Institute and the Council for Tobacco  
19 Research were forever disbanded. Another organization  
20 that you haven't heard much about during this trial, if  
21 anything, is one called the Center for Indoor Air

22 Research.  
23 They are gone. Not only are they gone;  
24 but, as I told you, one of the provisions of the  
25 agreement was that Philip Morris will no longer engage,  
26 and the rest of the tobacco industry, in any lobbying  
27 efforts of any kind relating to smoking and health  
28 issues.

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1 And this settlement agreement has a number  
2 of provisions that would regulate and provide for  
3 oversight of any trade associations that the tobacco  
4 industry might create in place of The Tobacco Institute  
5 to ensure that they did not engage in any of the kinds  
6 of activities that the states believed were improper and  
7 that were presented to you during the course of this  
8 trial.

9 Prohibition on agreements to suppress  
10 research. One of the claims made when the case and  
11 evidence was presented to you about that claim was an  
12 agreement to suppress research. Any such agreements are  
13 prohibited under the Master Settlement Agreement.

14 This appears at page 35.

15 And remember, as the court told you this  
16 morning, you are going to be provided with what is  
17 effectively an index that will show you where in this  
18 very large document each of these provisions can be  
19 found so that you can read them for yourselves.

20 This is probably the most important  
21 provision of the Master Settlement Agreement because it  
22 goes right to the heart of the claims in this case.  
23 Under the terms of this agreement, enforceable by any  
24 one or all of the 50 attorneys general of the 50 states  
25 of the United States, prohibits any participating  
26 manufacturer from making any material misrepresentation  
27 of fact regarding the health consequences of using any  
28 tobacco product, including any tobacco additives,

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1 filters, paper, or other ingredients. Flat-out  
2 prohibition, enforceable in court by any one of the 50  
3 states against any misrepresentations and the precise  
4 kinds of representations made in this case.

5 The Master Settlement Agreement also  
6 contains a provision that requires for the creation of a  
7 website in which all documents that have been produced  
8 in all of these cases anywhere will be available to  
9 anyone who wants to see it. Reporters, journalists  
10 writers, plaintiffs lawyers in other cases, any  
11 plaintiff or potential plaintiff who wants to bring a  
12 case against the tobacco industry like this one, can  
13 have public access to all of these documents on the  
14 website that was maintained and has, in fact, been set  
15 up in Minnesota pursuant to this agreement.

16 Each participating manufacturer agrees  
17 that following finality of this agreement, it will not  
18 initiate or cause to be initiated a facial challenge  
19 against the enforceability or constitutionality.

20 In other words, pursuant to this  
21 agreement, the manufacturers have given up the right to  
22 challenge any one of these statutes, ordinances, or  
23 administrative rules relating to tobacco control enacted  
24 prior to June 1, 1998; gave up the right to do that.

25 Establishment of a national foundation.  
26 The states demanded and the tobacco industry agreed to



27 the creation of a settlement fund for a charitable  
28 foundation. You can read the details of it yourselves;

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1 but it provides for payments to a national public  
2 education fund.

3 It sets out in detail the rules for the  
4 creation and the organization of that foundation. It  
5 spells out the functions that will be performed by that  
6 foundation, the activities to be engaged in, how  
7 foundation grant making will be done.

8 Then there is a section on enforcement;  
9 and as I mentioned to you earlier, this agreement  
10 provides special procedures for enforcement of the  
11 agreement in the event that the states believe that any  
12 one of the tobacco companies has violated the agreement;  
13 and, in fact, one such enforcement action has been  
14 brought and \$20 million in fines levied, not against  
15 Philip Morris, so it's not a toothless enforcement  
16 provision.

17 Those are the major provisions of the  
18 Master Settlement Agreement that have to do with  
19 preventing Philip Morris and the other cigarette  
20 companies from ever doing again the very activities that  
21 were challenged in this case and that you found to be  
22 unlawful.

23 But in addition to this, as Mr. Piuze  
24 mentioned this morning, Philip Morris and the other  
25 tobacco companies agreed to make very substantial dollar  
26 payments to the states to reimburse them for the costs  
27 they incurred in treating citizens of their states for  
28 personal injuries.

4175

1 200-and-some billion dollars over the next  
2 25 years -- it doesn't end -- but over the next 25  
3 years, the estimates are that the total payments will be  
4 over \$240 billion. Philip Morris alone will pay  
5 \$123 billion to the states in settlement of these  
6 claims.

7 And, in fact, Philip Morris has begun  
8 making such payments. This agreement was signed in  
9 1998, by the way. I'm going to read to you an excerpt  
10 from a report that is filed by Philip Morris with the  
11 Securities and Exchange Commission called a 10-K. We  
12 all decided you didn't need to see this entire  
13 document. I just want to read from it the statement,  
14 this is Exhibit 12385.

15 And at page 18 of this document, Philip  
16 Morris states to the Securities and Exchange Commission:

17 "For the year ended  
18 December 31, 1998, P.M., Inc.  
19 recorded settlement charges of  
20 \$3.1 billion, which  
21 represented its share of  
22 up-front payments required under  
23 the settlement agreement."

24 And in its form 10-K filed with the  
25 Securities and Exchange Commission for the year ended  
26 2001 -- and this is from Exhibit 12387 -- Philip Morris  
27 reported to the SEC:

28 "For the year ended

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1 December 31, 2001, P.M., Inc.  
2 recognized \$5.9 billion of sales

3           attributable to the foregoing  
4           settlement obligations."

5           In other words, Philip Morris has already  
6 paid about \$9 billion under this settlement and it has a  
7 lot more to come.

8           I point this out to you not because it  
9 represents punitive damages against Philip Morris, but  
10 merely to emphasize and to underscore that the states,  
11 all of them, have taken action against Philip Morris and  
12 have required Philip Morris and other cigarette  
13 companies to pay substantial amounts of money and will  
14 continue to for the indefinite future, on top of all of  
15 the restrictions that are imposed upon the marketing of  
16 cigarettes by Philip Morris.

17          All of this I bring to your attention. I  
18 will repeat this once again, not to claim any kind of  
19 credit. Philip Morris didn't enter into this settlement  
20 agreement happily or willingly. It was forced upon  
21 them. That's not the point. The point is, can they go  
22 back? The point is, can Philip Morris ever go back even  
23 if it wanted to at this point?

24          And while this settlement agreement was  
25 not voluntary, the acknowledgement on the public  
26 website, belated, but an acknowledgement that smoking  
27 causes disease and is addictive, was a voluntary  
28 statement.

4177

1           If Philip Morris wanted to go back on it,  
2 it couldn't get away with it. There's no way in the  
3 world Philip Morris can ever take back its admission,  
4 late as it came, that cigarette smoking causes disease  
5 and is addictive.

6           All of which I put before you because it  
7 relates to the second of the matters you are instructed  
8 to consider in determining what the amount of any  
9 punitive damage award should be, which is whether or not  
10 you need to concern yourself, in this case, in the case  
11 of Philip Morris, about deterring or discouraging it  
12 from engaging in these activities in the future.

13          Which leads me to the third, the third of  
14 the elements, that the punitive damages must bear a  
15 reasonable relation to the injury, harm, or damage  
16 actually suffered by the plaintiff.

17          Mr. Piuze just brushed that aside, but  
18 that's not something that you can do if you want to.  
19 That's not something you can ignore if you don't want to  
20 pay any attention to it. That instruction says that the  
21 punitive damages must bear a reasonable relation to the  
22 injury, harm, or damage actually suffered by the  
23 plaintiff.

24          Remember, ladies and gentlemen, this  
25 request for \$20 billion or \$6.7 billion in punitive  
26 damages is to be awarded to the plaintiff,  
27 Mrs. Bullock. That's what's being requested here, an  
28 award to the plaintiff of \$20 billion or \$6.7 billion;

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1          and what this instruction tells you is that under the  
2 law, any award of punitive damages that you make must  
3 bear a reasonable relation to the damages actually  
4 suffered by the plaintiff.

5          Over the lunch break, because I can't do  
6 that kind of math in my head, I made a calculation of  
7 the punitive damages that Mr. Piuze has asked you to

8 award to Mrs. Bullock. \$20 billion would be -- I'm sure  
9 you will all go home tonight and see whether my math is  
10 right -- 23,529 times the compensatory damages that  
11 you awarded Ms. Bullock. \$6.7 billion would be 7,882  
12 the compensatory damages that you awarded Mrs. Bullock.

13 I could just stop there and say those  
14 numbers don't bear a reasonable relationship to the  
15 damages that you found were actually suffered by the  
16 plaintiff and to which she was entitled; but I'm not  
17 going to stop there. The reason I'm not going to stop  
18 there is because there was a suggestion that this case  
19 was somehow unique; and as I said earlier, Mr. Piuze is  
20 a very good lawyer and he presented a very good case in  
21 the courtroom; but this is not a unique case.

22 You heard yesterday that there are some  
23 1500 lawsuits pending against Philip Morris, and there  
24 have been many in the past and there will no doubt be a  
25 lot more in the future.

26 You heard that there have been judgments  
27 entered against Philip Morris, not a couple, several  
28 judgments entered against Philip Morris, including

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1 judgments for very substantial punitive damages. It is  
2 absolutely true that those judgments are on appeal.  
3 That's Philip Morris' right to appeal those judgments.

4 But there are judgments on the books and  
5 there will no doubt be more judgments on the books for  
6 punitive damages, substantial punitive damages; and what  
7 are the chances that Philip Morris is going to win all  
8 of those on appeal?

9 My point is that there are lots and lots  
10 and lots of other lawsuits that have been brought in the  
11 past, that are being brought right now. You heard  
12 Mr. Johnson tell you that he was going to be testifying  
13 in a couple of cases that are set for trial in the very  
14 near future right here in California. These lawsuits,  
15 these trials that have occurred, all of the documents or  
16 virtually all of the documents you saw here were used in  
17 those trials. The videotapes of statements made by  
18 Philip Morris employees were played to the juries in  
19 those cases, and they are going to be played to the  
20 juries in the next cases.

21 Dr. Burns, Dr. Cummings, Dr. Benowitz,  
22 most, if not all of them, have testified in many, many  
23 other individual cases in the past and they will again  
24 in the future.

25 Any plaintiff who hasn't filed a suit but  
26 is aggrieved, has been hurt by smoking and feels that  
27 they were defrauded by Philip Morris can bring such a  
28 lawsuit now; and all of the evidence that they need to

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1 prosecute that case is available on public websites.

2 You can go home in your computer tonight,  
3 if you know how to do it, and find virtually everything  
4 you saw in this case; and any plaintiff who wants to  
5 bring a lawsuit against Philip Morris can do the same  
6 thing.

7 Once again, my point being only that there  
8 is nothing unique about this lawsuit or the facts of  
9 this case that would justify ignoring, as Mr. Piuze has  
10 suggested you should do, the requirement that the  
11 punitive damages you decide on should bear a reasonable  
12 relationship to the injury, harm, or damage actually

13 suffered by this plaintiff.

14 Now, that brings me to my final point,  
15 which is that you have some guidelines provided to you  
16 in these three enumerated elements that you are supposed  
17 to take into account; but in the end, the amount of the  
18 punitive damage award that you make in this case is left  
19 to your sound discretion, exercised without passion or  
20 prejudice.

21 And how do you go about doing this apart  
22 from applying the three elements that we have been  
23 discussing?

24 Obviously one thing that you have to do in  
25 applying your sound discretion without passion or  
26 prejudice is to consider the extent to which, if at all,  
27 punitive damages must be assessed in an amount that  
28 would deter Philip Morris from engaging in this kind of

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1 conduct in the future and that the damages must bear a  
2 reasonable relationship to the injury of the plaintiff.

3 But what else should you take into  
4 account?

5 Well, I'm going to suggest to you that  
6 what you should take into account is the fact about  
7 which there is no debate, which is that the world in  
8 which cigarettes are being made and sold today is very,  
9 very, very different from the world in which  
10 Mrs. Bullock took up smoking back in the 1950s and  
11 Sixties, and it's never going to be the same again. It  
12 just isn't.

13 Remember in his closing argument here a  
14 week or so ago, Mr. Piuze said -- and if I'm not  
15 paraphrasing him exactly, I'm sure you all will  
16 remember -- is that a century from now somebody would  
17 look back and wonder what was going on in people's minds  
18 when they smoked the way they did back in the Fifties  
19 and Sixties; and that is, in fact, where we are headed  
20 in this country.

21 You have seen the undisputed evidence that  
22 whereas in the 1950s and 1960s, half of the adult  
23 population of this country were smokers. Leaders,  
24 celebrities, heroes smoked. Smoking was a fundamental  
25 part of our American culture. Philip Morris was a  
26 respected member then of the American corporate  
27 community. Nobody really wanted to believe that  
28 cigarette smoking was bad for you.

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1 Everybody smoked or tolerated smoking  
2 around them, in their houses, in their cars, at the  
3 dinner table, in restaurants. It's all changed today.  
4 All changed dramatically.

5 Today, in 2002, less than 25 percent of  
6 the adult American population are smokers. In  
7 California the number, you will recall, is about  
8 17 percent. In Orange County, where Mrs. Bullock has  
9 lived for most of the past few years, the figure is even  
10 lower.

11 Smoking is forbidden in all public places  
12 essentially in California and in most public places  
13 elsewhere.

14 Smoking has become socially unacceptable.  
15 You don't let people smoke in the car with you. You  
16 don't let people smoke in your homes. If you have  
17 smokers around, you make sure you send them outside,

18 aside from pestering them to quit. The world of smoking  
19 has changed and it's never going to be the same.

20 Today warnings and information about  
21 smoking are everywhere. We not only have the warnings  
22 on the pack and on all advertisements, we have no TV  
23 advertising of cigarettes of any kind any more. We have  
24 anti-cigarette and anti-cigarette company advertising on  
25 billboards, on televisions.

26 We teach unequivocally in the schools that  
27 smoking is bad for you. We have the MSA restrictions.  
28 The Tobacco Institute, the Council for Tobacco Research

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1 are gone. It's never, ever going to be the same again.

2 And I point all this out to you because a  
3 logical context in which to think about whether or not  
4 big punitive damages are justified would be, do we  
5 really need to do something to change not just Philip  
6 Morris, the defendant, but to have an affect on the  
7 world; and the world of cigarettes and smoking is never  
8 going to be the same.

9 Thirteen years ago in 1989 the Surgeon  
10 General of the United States declared the anti-smoking  
11 program of the previous 25 years to have been one of the  
12 great public health successes in American history; and  
13 he said, you will recall my quoting it to you before,  
14 that the ashtray was following the spittoon into  
15 oblivion.

16 That was 13 years ago, and smoking rates  
17 have declined more even since and they are continuing to  
18 decline; and Mr. Piuze is right, a century from now I  
19 don't know who's going to be smoking cigarettes, but it  
20 ain't going to be very many people or very often.

21 And that's the world in which you have to  
22 think about whether there is a need to impose really  
23 severe punitive damages, whether to award to  
24 Mrs. Bullock in this case the kind of money that  
25 Mr. Piuze is asking for.

26 Now, I'm sure that there are some of you,  
27 maybe some of you who didn't feel this before this trial  
28 started but do now, that cigarettes really shouldn't be

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1 made and sold. I don't doubt that there are some of you  
2 who think that. That's not the issue in this case and  
3 it isn't the issue that is before you in connection with  
4 punitive damages.

5 Much of what Mr. Piuze was telling you  
6 this morning had nothing to do with the allegations in  
7 this case or the things that you found Philip Morris did  
8 that were wrongful, but had to do with the overall  
9 impact of smoking on our culture, on our society, on the  
10 health of the American people; and those are all very  
11 legitimate questions, but they are not before you in  
12 this case.

13 They are complicated questions too, and  
14 I'm going to ask you to think about this a little bit.

15 For example, if you outlawed smoking, what  
16 would happen? Would there be a black market? Who would  
17 those black market manufacturers of cigarettes be?  
18 Would the cigarettes that they sold and the American  
19 people used be safer or more dangerous than the ones  
20 that are on the market now? Would black market  
21 manufacturers or sellers of cigarettes have any interest  
22 in trying to develop and spend billions of dollars

23 trying to develop safer cigarettes?  
24 I don't know the answer to those questions  
25 and neither do you, and they are not before you.  
26 Would it be prudent public policy, would  
27 it be contrary to our basic way of life to try to forbid  
28 entirely the use of a product that although dangerous, a

4185

1 lot of people seem to like? Tough question. I don't  
2 know what the answer is. You may have feelings, but  
3 it's not in this case.

4 I'm trying to find that instruction the  
5 judge read to you at the close of trial before and I  
6 seem to have misplaced it. Mr. Leiter has found it for  
7 me.

8 "The sale of cigarettes is  
9 and has been at all times a  
10 lawful activity in this State.  
11 Congress has determined that it  
12 is legal for Philip Morris to  
13 make, advertise, and sell  
14 cigarettes. You cannot find  
15 Philip Morris liable for  
16 plaintiff's injury, nor can you  
17 punish Philip Morris solely  
18 because Philip Morris makes,  
19 advertises, or sells cigarettes."

20 That's the law, and it's a law that makes  
21 sense because that's not your job in this case. It just  
22 isn't. Your job is to determine whether, and if so, the  
23 extent to which Philip Morris should be punished, should  
24 be required to pay punitive damages to Mrs. Bullock in  
25 this case because of the fraudulent conduct that it  
26 engaged in, not because it makes and sells cigarettes.

27 Now, you have seen over the course of the  
28 last day and again this morning from Mr. Piuze, big

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1 numbers. There's no question about it. Philip Morris  
2 is a very large company. It has billions of dollars in  
3 sales. It has billions of dollars in profits; and  
4 there's no debate, no dispute, that Philip Morris could  
5 afford to pay a billion dollars or \$6.666 billion in  
6 this case. There's no question about that.

7 That's not the issue, though. The issue  
8 is whether or not it ought to pay, whether you ought to  
9 impose upon it in this case a requirement that it pay to  
10 Mrs. Bullock billions of dollars.

11 That's your job.

12 Mr. Piuze tells you that you are  
13 empowered. Next week you are going to go back to your  
14 jobs and your lives and you won't have the ability  
15 anymore to do anything about this. This is your chance;  
16 and, of course, he's right. This is your opportunity.

17 Next week you are going to go back to your  
18 lives and your families and probably forget about this  
19 case pretty soon and do the other things that are fun  
20 and that you enjoy and that you need to do in your  
21 lives, and he's telling you basically you have your  
22 chance here today. This is your day. Make something of  
23 it. Really sock it to them.

24 And there's no question that it is; but  
25 would that be right? Would that be justice to award to  
26 Mrs. Bullock 23,000 or even 7,000 times in punitive  
27 damages the amount that you decided that she was

28 entitled to in compensatory damages? Is it necessary to

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1 prevent Philip Morris from engaging in this kind of  
2 conduct in the future?

3 And I think if you search your hearts,  
4 review the evidence, and talk amongst yourselves, you  
5 will come to the conclusion that it isn't; that that  
6 isn't the right message for you to send in this case.

7 Now, I can't tell you how to come up with  
8 the number any more than Mr. Piuze can. It's easy to  
9 pick a big number. It's not easy to pick a small  
10 number, which is obviously what I'd like to suggest to  
11 you that you do. I don't know whether your punitive  
12 damage award should be double the amount of compensatory  
13 damages you awarded her, three times or four times or  
14 five times.

15 I can't tell you what that amount ought to  
16 be. You are going to have -- I took it down. You are  
17 going to have to exercise your sound discretion without  
18 passion or prejudice and decide amongst yourselves what  
19 that amount should be.

20 I'm just going to leave you with the  
21 thought that in this case, on the facts that you have  
22 seen and heard, on the law that you have been given by  
23 the court, the punitive damage award to Mrs. Bullock in  
24 this case should be much, much smaller than what  
25 Mr. Piuze has been suggesting and that it should be a  
26 relatively modest one.

27 Again, Mr. Leiter and I thank you for your  
28 time and your attention. When this is finally over,

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1 good luck to you. Thanks.

2 THE COURT: Thank you, Counsel.

3 I think that in case there's a need to use  
4 any exhibits, we will take a short recess allowing  
5 Mr. Piuze to have whatever he wants to have put on the  
6 boards and get ready and then we will resume. Will ten  
7 minutes be enough time? And then we will hear from  
8 Mr. Piuze for about 16 minutes and then the case will be  
9 yours.

10 So, we will take a ten-minute recess and  
11 then we will conclude.

12  
13 (A recess was taken in the proceedings.)  
14

15 (The following proceedings were held  
16 in open court within the presence of  
17 the jury:)  
18

19 THE COURT: The record will reflect that the  
20 jury is present, all the attorneys are present. The  
21 temperature is about the same.

22 (Laughter.)

23 THE COURT: We tried. We have tried; but  
24 somehow or another it isn't working, but we will  
25 continue to use those methods.

26 Mr. Piuze, the floor is yours.  
27  
28

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1 \* CLOSING ARGUMENT

2

3 BY MR. PIUZE:

4 On the other closing statement on the  
5 first phase of the trial, Mr. Bleakley -- I should stop  
6 for a second. Obviously, Philip Morris can afford the  
7 best lawyers on the face of the earth and they got  
8 them -- told you the cat was out of the bag.

9 Philip Morris can never go back. The  
10 cat's out of the bag, and I meant to ask on my rebuttal  
11 then and didn't, but I will now: Who put the cat in the  
12 bag? Who kept the cat in the bag? Who made money  
13 keeping the cat in the bag? So, yeah, the cat's out of  
14 the bag. I guess that's cause for a big pat on the  
15 back, huh?

16 Today we heard that the 45 attorneys  
17 general -- and it was actually 50. Four states got it  
18 on their own first before this big settlement occurred,  
19 but anyway, whether it's 45 or 50.

20 Forty-five attorneys general -- this is a  
21 quote -- got Philip Morris' attention. Son of a gun.  
22 Why in the world didn't human life get Philip Morris'  
23 attention? Why in the world didn't countless deaths get  
24 Philip Morris' attention? Why did it take 45 attorneys  
25 general to get Philip Morris' attention?

26 There's a western that I like called  
27 LIBERTY VALANCE, a John Wayne movie, and there's a line  
28 from that movie. It was a song and it said, "The only

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1 law that Liberty understood was from the end of a gun;  
2 and when it came to shooting straight and fast, he was  
3 mighty good."

4 And what got Philip Morris' attention, 45  
5 attorneys general, was muscle, pure and simple. That's  
6 all that's going to get Philip Morris' attention is  
7 muscle.

8 So we have the opportunity to get Philip  
9 Morris' attention, because I didn't hear any  
10 disagreement about the fact that since that Master  
11 Settlement Agreement was signed, Philip Morris' profits  
12 have gone merrily up, up, up, and its sales have gone  
13 up, up, up, and everything is fine in Tobaccoville.  
14 Everybody is making more money than they were making  
15 before.

16 Gee, it's awfully nice that they agreed  
17 not to target youths again, because when you go back in  
18 the jury room, you will see that's what they agreed to  
19 decades and decades ago.

20 But, wow, we've got Philip Morris -- we've  
21 got Philip Morris cornered. Poor Philip Morris is  
22 cornered now. It's cornered. It can't move.

23 Think about this. Here we are in the main  
24 anti-smoking state in the United States with one of the  
25 lowest smoking rates in the United States, and this is  
26 one of the most forward, progressive, urban states in  
27 the United States, and somehow our legislature gave them  
28 immunity for ten years; and from 1988 and '89 and '90,

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1 as much as I or someone like me wanted to go after them,  
2 hands tied.

3 MR. BLEAKLEY: I am going to object to this as  
4 improper, your Honor.

5 THE COURT: Sustained.

6 MR. PIUZE: Philip Morris is a resourceful foe.  
7 Never, ever think Philip Morris is done or cornered or  
8 has no options, ever. Picture this, please: Special



9 forces in the desert, after a lot of work and effort,  
10 they corner bin Laden. "I won't do it again. I won't  
11 do it any more."

12 I could go back in history to bigger worse  
13 people and bigger worse atrocities, but think about the  
14 concept of what you heard here today, that after an  
15 evildoer, a wrongdoer, is run to the ground, all that  
16 person has to say is, "Oh, okay. I won't do it any  
17 more."

18 Well, that's trivializing what happened  
19 here. I hope they won't do it any more. Philip Morris  
20 isn't worthy of trust, ever. The number I asked for,  
21 the second number, was not \$6.7 billion. It was a very  
22 special number for this case. It was 6.666.666.  
23 billion dollars. It's not \$6.7 billion.

24 A reasonable relationship is in the eye of  
25 the beholder. If you want to hear about relationships,  
26 just look at that black line -- remember that black line  
27 across the bottom, a total of 65 lawsuits brought here.  
28 You want to start doing math? It comes out to about

4192

1 1 in 7,000 in the last ten years. It comes out to about  
2 one in 28,000 for the last 40 years. Talk about  
3 reasonable relationships.

4 The jury instructions given to you are  
5 vague and they say what they say. The reprehensibility  
6 that occurred in this case, the reprehensibility that  
7 occurred giving rise to the facts of this case is off of  
8 the scale, and hopefully we will never again ever see  
9 anything like it.

10 Philip Morris, as far as being deterred,  
11 is a resourceful foe, and I would never, ever, ever  
12 think it was out of options, ever; and as far as  
13 reasonable is concerned, a properly vague term, a  
14 reasonable relationship. I've told you what I thought  
15 about the reasonable relationship.

16 When one of these cases is actually  
17 paid -- and there have been several judgments and I know  
18 it and Mr. Bleakley knows it, several -- when one of  
19 these judgments is actually paid, maybe Mr. Bleakley or  
20 one of his partners can get up in front of a jury and  
21 say, "Okay, take this into account."

22 But until one of these is actually paid,  
23 it's total speculation what will happen to these  
24 judgments, and I should know and he should know.

25 By saying that this one person,  
26 Mrs. Bullock, doesn't deserve this much money -- and, of  
27 course, we know Mrs. Bullock will never see it, ever.  
28 By dividing and conquering, here's what happens: Philip

4193

1 Morris wins. Because if the magnanimous gesture that  
2 this jury awards five times in punitive damages, that's  
3 four cups of coffee for Philip Morris. That's not a  
4 punishment. That's an insult. It's an insult to human  
5 life.

6 There's not been one penny ever paid,  
7 ever, by Philip Morris for personal injury damage as a  
8 result of smoking, and there's not been one penny paid  
9 by Philip Morris ever for punitive damages; and if and  
10 when that occurs, that might be a valid point to bring  
11 up.

12 Do you think any smoker can bring a case?  
13 Let the next smoker do it. Let the next smoker get a

14 piece of the pie. Really? What do you think is going  
15 to be said about the next smoker in that trial?  
16 "Ladies and gentlemen, this case is about  
17 this individual smoker. She could have quit. She  
18 should have tried harder. She doesn't deserve  
19 anything"; and that smoker better be ready, because  
20 getting this far, this is the tip of the iceberg.  
21 So here's how I'd like to end. I came  
22 from the real world, and in the real world we knew what  
23 bullies were; and in the real world, there was a saying  
24 that you have all heard, "The bigger they are, the  
25 harder they fall," and it's time for them to go down,  
26 now.  
27 You see something like this, you should  
28 never, ever, ever let this happen again. Don't let

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1 someone else do this, maybe some other time some other  
2 place. This is us here now.  
3 He wants justice. That's not justice.  
4 That's not justice.  
5 I can't improve on this. Margaret Meade,  
6 "Never doubt that a small group of thoughtful citizens  
7 can change the world. Indeed, it's the only thing that  
8 ever has."  
9 Thank you. I'm done.  
10 THE COURT: Thank you.  
11 Ladies and gentlemen, if you would now  
12 retire to the jury room, Mrs. Perez will bring you the  
13 more recent exhibits. You can begin your  
14 deliberations. I have instructed you already and you  
15 have those instructions before you as to the law and you  
16 have a copy of the verdict form.  
17 And if those of you who have cell phones  
18 can turn them in to Mrs. Perez; and if the jury room  
19 turns out to be as warm as in here, let us know and we  
20 will see what we can do, maybe even bring you cold  
21 water.  
22 Thank you for your attention and you are  
23 excused to go into the jury room.  
24 Those who are the alternate jurors, please  
25 remain, and we will ask that you go down to the jury  
26 assembly room until there is a verdict and then we will,  
27 of course, call for you.  
28 You do remember your oath?

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1 THE COURT LIAISON: Right.  
2 THE COURT: Thank you.  
3  
4 (The jury begins deliberations.)  
5  
6 (A recess was taken in the proceedings.)  
7  
8 (The following proceedings were held  
9 in open court outside the presence  
10 of the jury:)  
11  
12 THE COURT: Back on the record.  
13 Bullock versus Philip Morris. The record  
14 will reflect all counsel are present. The jury is not  
15 present.  
16 Earlier a motion was made for a mistrial  
17 based upon part of the argument made in his initial  
18 closing argument on punitive damages by Mr. Piuze.

19 I have been handed two pages. At the top  
20 in pen, the date 10-2-02, and in the upper right-hand  
21 corner, pages 7 and 8, and beginning on line 17 of  
22 page 7, there is a yellow line at the first sentence on  
23 line 17 and then going down the side of the page.

24 No such line appears on page 8, but I  
25 assume that I was to read the entirety of page 8. Tell  
26 me if you want me to read the whole page or page 1 and  
27 then all of page 2, which I have done.

28 MR. BLEAKLEY: Well, your Honor, I think that

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1 the specific portion of the transcript that we believe  
2 contains argument that was improper and calls for a  
3 mistrial is that which appears on page 7, line 17. It  
4 begins with line 17 on page 7, which Ms. McArthur has  
5 highlighted, and continues to through line 5 of page 8.

6 THE COURT: Thank you. I am going to take the  
7 liberty of marking this document and go down to line 5  
8 of page 8 by putting a yellow line on the right-hand  
9 side.

10 Mr. Piuze -- well, first, I guess,  
11 although you did make comment that was based upon your  
12 memory of the words that were spoken, and since that  
13 time you have had a chance to review this two-page  
14 document, is there anything you wish to say to add to  
15 what you have thus far said?

16 MR. PIUZE: Sure.

17 THE COURT: No, no, not you. We are going to  
18 let -- the motion is being made by Mr. Bleakley and then  
19 I will give you a chance to respond.

20 I'm sorry, Mr. Piuze.

21 MR. PIUZE: Don't be.

22 MR. BLEAKLEY: Well, I can't remember exactly  
23 what I said the first time so I'll repeat it. It's  
24 brief.

25 THE COURT: It would be hard to repeat it if  
26 you can't remember what you said.

27 MR. BLEAKLEY: I'll make the argument again.

28 THE COURT: There you go.

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1 MR. BLEAKLEY: Having reviewed the transcript,  
2 my recollection of what Mr. Piuze said was confirmed.  
3 He made an argument that I think could not be more  
4 explicit in telling the jury that it should ignore and  
5 leave to the appellate courts and judges the third  
6 requirement for a finding of punitive damages; namely,  
7 that punitive damages must bear a reasonable relation to  
8 the injury, harm, or damage actually suffered by the  
9 plaintiff.

10 I think it's clear from the transcript  
11 that what he told them is they should ignore it, that  
12 people don't know what they're talking about, we can't  
13 trust our legislature anyway; and I think that was  
14 inviting jury nullification and it's the kind of  
15 inappropriate, improper argument that cannot be  
16 corrected by a curative instruction, although I would  
17 reserve the right to ask for one if the court declined  
18 to grant our motion for a mistrial.

19 THE COURT: Mr. Piuze.

20 MR. PIUZE: If an objection had been made at the  
21 time, I could have and would have clarified that as  
22 follows, and I guess I couldn't clarify it this much;  
23 but I'll tell your Honor that I have been involved in

24 major punitive damages cases since 1983, and because of  
25 the nature of that particular beast, I have been  
26 involved in motions for new trials and appeals on very,  
27 very, very large verdicts, off and on for almost 20  
28 years on punitive damages.

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1 And I have followed the appellate  
2 decisions that exist on these; and there's absolutely no  
3 rhyme or reason to the appellate decisions; and I can  
4 say to the court that the United States Supreme Court on  
5 successive opinions had language that said 4 to 1 is  
6 close to the line, and that would probably be Haslet;  
7 and the next time out in TXO said, "523 to 1, go for it.  
8 It's just fine."

9 A reasonable relationship is in the eye of  
10 the beholder and I can't solve it here; and it is  
11 something that has to be left to the courts on a  
12 case-by-case basis. That's what I meant, and I didn't  
13 mean to engage in jury nullification and I didn't engage  
14 in jury nullification.

15 I wouldn't have mentioned TXO and Haslet  
16 by name to the jury, but I would certainly have said  
17 that these are things that smarter people than me are  
18 going to have to figure out some other time, some other  
19 place. I never told them to disregard any instruction.

20 THE COURT: Okay. The motion for mistrial is  
21 denied. The lawyers for the defendant who wish to offer  
22 a substitute or wish to have the jury be given  
23 instructions will now be considered; and if you have  
24 such language, you can put it on the record.

25 MR. BLEAKLEY: Could we take a couple of  
26 minutes?

27 THE COURT: Absolutely.

28 MR. BLEAKLEY: It may take more than a couple.

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1 THE COURT: It always does.

2 (A pause in the proceedings.)

3 THE COURT: Mr. Piuze, what is your position as  
4 to this? I haven't looked at it.

5 MR. PIUZE: I object to it. It isn't necessary.

6 THE COURT: Okay.

7 (A pause in the proceedings.)

8 THE COURT: Okay. The record will reflect that  
9 lawyers for the defendant have proffered the following  
10 instruction for the court to give, quote:

11 "During argument it was  
12 suggested to you that you could  
13 disregard the requirement in my  
14 instructions that any punitive  
15 damage award must bear a  
16 reasonable relation to the  
17 injury, harm, or damage actually  
18 suffered by the plaintiff.

19 "That suggestion was  
20 incorrect. You must follow the  
21 law as I instruct you. Any  
22 punitive damage award in this  
23 case must bear a reasonable  
24 relation to the injury, harm, or  
25 damage actually suffered by the  
26 plaintiff."

27 Is that correct?

28 MR. BLEAKLEY: Yes, your Honor.

1 THE COURT: The plaintiff's counsel has objected  
2 to the reading of this; therefore, the court will rule  
3 that it will not be read to the jury.

4 The court will also indicate that it has  
5 read that portion of the argument to the jury given by  
6 counsel for the plaintiff, and nowhere during -- in that  
7 argument does this court detect a statement by the  
8 lawyer or even, in the opinion of this court, an  
9 allusion to the fact that the jury should engage in  
10 nullification and, therefore, will decline to so remove  
11 that.

12 It's interesting that a lot of these, the  
13 language that one hears in final argument is a lot in  
14 the ear of the beholder, if such a thing exists; and to  
15 some, there are nuances that are of great significance  
16 and others find something quite different.

17 Apparently, Mr. Piuze, few, if any, got  
18 your reference to 6,666,666,666 at all on the jury; and  
19 so occasionally, it just flies over their head.

20 And any such reference, if Mr. Bleakley  
21 heard it in your argument, suggesting nullification is  
22 far too subtle for me to discern, and my guess is it's  
23 far too subtle for the jury to discern.

24 In any rate, you made your record. The  
25 request is denied.

26 MR. LEITER: And, your Honor, may I just say one  
27 final thing so that our record is clear, in case it is  
28 reviewed?

1 THE COURT: Absolutely.

2 MR. LEITER: And that is, the timing of the  
3 objection was made after the conclusion of Mr. Piuze's  
4 opening closing argument but prior to his completing his  
5 time with his rebuttal argument.

6 THE COURT: That's a correct statement.

7 MR. LEITER: Thank you.

8 THE COURT: Okay. Anything else that we need to  
9 take up this afternoon?

10 MR. PIUZE: No, from the plaintiff.

11 THE COURT: All right. You are 11 minutes away  
12 from having the jury excuse themselves for the  
13 afternoon, so you might as well hang around. You never  
14 can tell what is likely to happen. It can't hurt.

15  
16 (A recess was taken in the proceedings.)

17  
18 (The matter was continued to Thursday,  
19 October 3, 2002 at 9:00 a.m. for further  
20 proceedings.)

21 \* \* \*